

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 81-275)

Bonds

Approval of authorized Facsimile signature; T.D.'s 79-241 and 81-49 amended.

Peerless Insurance Company, Keene, New Hampshire, has requested that the name of Franklin Ostroff, attorney-in-fact, be added to the list of authorized facsimile signatures published in Treasury Decision 79-241 as amended by Treasury Decision 81-49, and on file with the Customs Service for use on Customs bonds upon which it acts as surety.

Peerless Insurance Company has furnished the Customs Service with copies of Mr. Ostroff's signature and a certified copy of the corporate resolution agreeing to be bound by the facsimile signature.

The name of Franklin Ostroff, attorney-in-fact, is hereby added to the list of authorized facsimile signatures on file for Peerless Insurance Company.

BON-3-01

Dated: October 23, 1981.

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 81-276)

Customs Approved Public Gauger

Approval of public gauger performing gauging under standards and procedures required by Customs

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of Hull and Cargo Surveyors, Inc., 161 William Street, New York, New York 10038, to gauge imported petroleum and petroleum prod-

ucts in the Customs District of San Juan in accordance with the provisions of section 151.43 of the Customs Regulations is approved.

Dated: October 26, 1981.

ANTHONY L. PIAZZA,

Acting Director, Entry

Procedures and Penalties Division.

[Published in the Federal Register Oct. 30, 1981 (46 FR 53829)]

(T.D. 81-277)

Cancellation of Customs Approved Public Gauger

Cancellation of Approval to act as a Public gauger for Customs purposes

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the approval of Caribbean Petroleum Inspectors, Inc., P.O. Box 6992, Christiansted St. Croix, U.S.V.I. 00820, to gauge imported petroleum and petroleum products in the Customs Districts of San Juan, Puerto Rico and Charlotte Amalie, St. Thomas, Virgin Islands, in accordance with the provisions of section 151, Subpart C, of the Customs Regulations is hereby cancelled.

Dated: October 26, 1981.

ANTHONY L. PIAZZA,

Acting Director, Entry

Procedures and Penalties Division.

[Published in the Federal Register, Oct 30, 1981 (46 FR 53829)]

U.S. Customs Service

Customs Service Decisions

U.S. DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

The following are decisions made by the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

DONALD W. LEWIS,
Director,
Office of Regulations and Rulings.

(C.S.D. 81-211)

Classification: Different Types of Naphthas Manufactured From Canadian Crude Oil at an Ontario Refinery

Date: March 31, 1981
File: CLA-2 CO:R:CV:G
066217 JH

This is in reference to your inquiry concerning the classification of different types of naphthas manufactured from Canadian crude oil at an Ontario Refinery.

Shell-Sol/Mineral Spirits is understood to be obtained by the distillation of crude oil. It was not obtained from products described in Subpart A in the benzenoid section of the tariff schedules; it does not contain any added synthetic components and was not produced artificially by synthesis. It is a mixture of approximately 11 percent by volume of aromatic hydrocarbons. As it conforms to the specification for petroleum naphtha and is obtained by distillation of crude oil, this product is classifiable under the provision for naphthas, obtained from crude oil, in item 475.35, Tariff Schedules of the United States (TSUS), dutiable at 0.25 cent per gallon.

Cyclo-Sol 53 is said to be distilled into straight run gasoline in the crude distillation column. A catalyst is used to convert low octane components (Paraffins and Naphthenes) into higher octane aromatics.

It is a mixture containing approximately 35 percent by weight of benzenoid products and 65 percent by weight of alkylbenzenes. The product was artificially produced by synthesis, but does not contain any added synthetic benzenoid components.

Cyclo-Sol 53 is a solvent mixture essentially of benzenoid components, 35% by weight, it is classifiable under the provision for mixtures in item 407.15, with the rate applicable to highest component material. The highest rate component material is that of alkylbenzenes in item 402.36, TSUS, at 1.4 cents/lb plus 17.3 percent ad valorem.

Crude oil is distilled into kerosene. A physical separation takes place in the extraction unit whereby approximately 99.5 percent of the aromatics (Cyclo-Sol 63) are removed from the kerosene stream. It is a mixture containing by weight not over 50 percent of any single hydrocarbon and consists essentially of products having a benzenoid structure, but was not obtained from a benzenoid source; it was not produced by synthesis and does not contain any added synthetic benzenoid components.

Cyclo-Sol 63 is essentially a mixture of hydrocarbons not specially provided for, derived from petroleum, which contain not over 50 percent of any single hydrocarbon compound by weight, in item 475.65, TSUS, dutiable at 0.25 cent per gallon.

(C.S.D. 81-212)

Temporary Importation Bond: Bond Liability May Be Cancelled Only Upon Timely Exportation or Destruction of All Articles Entered Under TIB

Date: April 22, 1981
File: CON-9-CO:R:CD:D L
212803

Issue: May liability under a temporary importation bond (TIB) be cancelled in part upon exportation of a portion of the merchandise admitted temporarily free of duty under bond?

Facts: Seven motor vehicles and attendant equipment were imported into the United States temporarily free of duty under bond under item 864.30, Tariff Schedules of the United States (TSUS), for the purpose of EPA emissions field testing. The field testing of the engines has been completed and the importer wishes to export the engines and incidental equipment and obtain partial cancellation of the TIB entries to the extent of the value of the exported engines and incidental equipment. The TIB importer will retain the vehicles in the United States, install new engines imported under consumption entries, perform EPA field testing on the replacement engines,

remove the replacement engines, and export the vehicles, cancelling the TIB's in full.

Law and analysis: We note initially that it is unclear from the inquiry whether the motor vehicles admitted under item 864.30, TSUS, are for testing or whether only the engines installed in the vehicles are being tested. If the engines only are being tested we assume, for the purposes of this response, that the entire vehicle is a necessary adjunct to the testing performed.

Headnote 1(a) to Part 5C, Schedule 8, TSUS, provides in part that articles described in that subpart, when not imported for sale on approval, may be admitted into the United States without the payment of duty, under bond for their exportation within 1 year from the date of importation, which period may be extended to a maximum of 3 years.

Section 10.39(a), Customs Regulations (19 CFR 10.39(a)) provides in part that bonds taken pursuant to Schedule 8, Part 5C, TSUS, may be cancelled in the manner prescribed in section 113.55. Section 113.55(b)(1), Customs Regulations (19 CFR 113.55(b)(1)), provides that a bond to assure the exportation of merchandise may be cancelled upon exportation.

There is no provision for "partial" cancellation of a bond. The bond may be cancelled only upon timely exportation or destruction of all the articles covered by the TIB entry and bond (with the exception of the recent amendment of Headnote 2(b)(ii), Part 5C, Schedule 8, TSUS, allowing the retention of valuable wastes in the United States upon tender of duties). Neither is there any legal requirement that all articles imported under a single TIB entry be exported at the same time, although practical considerations suggest that clearance procedures are simplified where all articles imported under a specific TIB are exported at the same time.

The inquirer indicates that one port would require an application for manipulation and the presence of a Customs Inspector when the engines are removed from the vehicles. We find no provision of law or regulation requiring an application for manipulation and the presence of a Customs Inspector for the described operation involving articles admitted under TIB. Pursuant to section 10.38(a), Customs Regulations (19 CFR 10.38(a)), of course, the district director may require such examination and identification of the articles as circumstances warrant.

Holding: Bonds taken pursuant to Schedule 8, Part 5C, TSUS, may be cancelled only upon timely exportation or destruction of all articles admitted under the TIB entry, with an exception not applicable here.

Articles admitted under TIB may be exported or destroyed at

any time within the TIB period, or any lawful extension thereof, either wholly or in part; however, where there are partial exportations within the bond period, the entire amount of the bond shall remain in effect pending timely exportation or destruction of all articles admitted under the bond.

There is no requirement for an application for manipulation and Customs supervision for the removal of engines from motor vehicles admitted under TIB prior to exportation of the engines.

(C.S.D. 81-213)

Temporary Importation Under Bond: Privileged Foreign Status Merchandise May Not Be Temporarily Imported Under Bond From a Foreign-Trade Zone

Date: May 5, 1981
File: CO:R:CD:D
212808 WR

Issue: Whether privileged foreign merchandise may be entered for warehouse or temporarily imported under bond from a foreign-trade zone?

Facts: No facts were presented.

Law and analysis: Customs Service Decision 81-71 (C.S.D. 81-71), which was circulated as Legal Determination 80-0193, held that merchandise temporarily imported under bond from a zone must be exported or destroyed to cancel the bond liability. If returned to a foreign-trade zone; that merchandise must be admitted only as zone-restricted merchandise. Customs Service Decision 79-454 (C.S.D. 79-454), which was circulated as Legal Determination 79-0279, held that merchandise may be entered into the Customs territory from a foreign-trade zone by a temporary importation under bond.

The first proviso to section 3 of the Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81c), provides that when foreign merchandise in a zone has been given privileged status, that merchandise may be sent into the United States on payment of the liquidated duties and determined taxes. In promulgating section 146.48(c) of the Customs Regulations, the Customs Service interpreted that provision to prohibit articles composed of or derived in part from privileged foreign merchandise from being entered for warehousing from a foreign-trade zone. The Customs Service has ruled that privileged foreign merchandise may not be withdrawn from a foreign-trade zone and entered into a Customs bonded warehouse for any purpose. See Customs Service Decision 81-8 (C.S.D. 81-8), which was circulated as Legal Determination 80-0124. The basis for the holding

in C.S.D. 81-8 was the belief that the first proviso to 19 U.S.C. 81c forbids any delay in the payment of duties, a circumstance that would occur if privileged foreign merchandise were allowed to be entered into a Customs bonded warehouse from a zone.

For similar reasons, privileged foreign merchandise may not be temporarily imported under bond from a zone.

Holding: The decisions published as C.S.D. 79-454 and C.S.D. 81-71 are not applicable to privileged foreign status merchandise. Privileged foreign status merchandise may not be temporarily imported under bond into the Customs territory from a foreign-trade zone.

(C.S.D. 81-214)

Vessels: Applicability of Coastwise Laws to the Towing of U.S.-Flag Drilling Rigs by a Foreign-Flag Tug Between Sites on the U.S. Outer Continental Shelf

Date: May 6, 1981
File: VES-3-15
VES-10-03
CO:R:CD:C
105063 PH

This ruling concerns the application of the coastwise laws to the towing of United States-flag oil drilling rigs by a foreign-flag tug between drilling sites on the United States outer continental shelf.

Issue: 1. Is 46 U.S.C. 316(a) violated if a United States-flag semi-submersible drilling rig is towed by a foreign-flag towing vessel from a location on the outer continental shelf at which it has completed exploration for oil to a new drilling site on the outer continental shelf which is—

- a. marked by a buoy marker attached to the outer continental shelf, or
- b. not marked by any device attached to the outer continental shelf.

2. Are the coastwise laws violated if crewmembers, equipment, and supplies of a drilling rig, to be used solely by the drilling rig, are carried aboard the rig from a location on the outer continental shelf at which the rig has completed exploration for oil to a new drilling site on the outer continental shelf which is—

- a. marked by a buoy marker attached to the outer continental shelf.
- b. not marked by any device attached to the outer continental shelf.

Facts: It is proposed to use a foreign-flag tugboat to tow United States-flag semi-submersible oil drilling rigs from a location on the outer continental shelf off the Texas coast to another location on the

outer continental shelf off the Florida coast. Both points are more than three miles offshore.

The location from which a drilling rig would be towed would be one at which petroleum exploration has been successfully or unsuccessfully completed. Before the towline from the tug would be connected to the drilling rig, all drilling equipment would have been lifted out of the seabed back onto the rig and, "normally", a cap or plug would have been placed in the hole from which the drilling equipment has been withdrawn. At the time the towline is connected to the drilling rig, the drilling rig would be held in place by 4 to 12 anchors attached to the seabed. After connection of the towline to the drilling rig, the anchors would be raised and, when they had been fully lifted and no device from the drilling rig was attached to the seabed, the tug would begin towing the drilling rig to its new location.

Upon its arrival at the destination, the tugboat would tow the drilling rig several hundred feet past the drilling site against the current. Two or three anchors would be dropped and after the drilling rig had floated back with the current over the drilling site, two or three additional anchors would be dropped to the seabed. After the rig had been anchored in place and before drilling operations had commenced, the towline would be disconnected.

Drilling sites to which the drilling rigs would be towed would be marked by marker buoys if the sites were located in shallower water (up to 200-300 feet in depth). Drilling sites in water of greater depths would be located by the use of satellite navigation equipment on the drilling rigs and tugboat.

Certain crew members, equipment, and supplies such as drill bits, tools, piping, and fuel, may be carried aboard the drilling rig between the drilling sites. The equipment would have been aboard the drilling rig at the drilling sites off Texas and, with any necessary replacements for damaged or lost equipment or supplies, would be used solely by the rig at the destination drilling site.

Law and analysis: Title 46, United States Code, section 316(a), in part, prohibits the use of a foreign-flag vessel to tow a United States-flag vessel from any port or place embraced within the coastwise laws of the United States to another such port or place, or for any part of the tow. Section 883 of title 46 contains a similar prohibition against the coastwise transportation of merchandise in any vessel other than a vessel built in and documented under the laws of the United States, and owned by a citizen of the United States. Section 289 of title 46 and other statutes (see e.g., 46 U.S.C. 11) prohibit foreign vessels, vessels not qualified to engage in the coastwise trade, and vessels lacking proper documentation from transporting passengers between places in the United States, either directly or by way of a foreign port.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended by the Outer Continental Shelf Lands Act Amendment of 1978 (43 U.S.C. 1333(a)) (the Act), provides, in part, that the laws of the United States are extended to the subsoil and seabed of the outer continental shelf (shelf) and to all installations and other devices permanently or temporarily attached to the seabed which may be erected thereon for the purposes of exploring for, developing, or producing resources therefrom to the same extent as if the shelf were an area of exclusive Federal jurisdiction located within a state. The 1978 amendment to section 4(a) of the Act substituted "and all installations and other devices permanently or temporarily attached to the seabed" for "and fixed structures".

Treasury Decision 54281(1), publishing an abstract of a Customs decision dated December 11, 1956, stated, in part, that the coastwise laws are extended to mobile rigs during the period they are secured to or submerged onto the seabed of the shelf. Subsequent rulings applied the same principles to drilling platforms, artificial islands, and similar structures.

In ruling letter VES-3-15 RRUCDC 104880 JL, October 22, 1980 (circulated as Legal Determination 81-0100), Treasury Decision 54281(1) was expanded so that the Customs and navigation laws including the coastwise laws, apply to devices such as a buoy marker submerged onto or attached to the shelf for the purpose of resource, exploration operations, and to a well casing with attendant accessory systems, when submerged into the seabed of the shelf. The basis for expanding Treasury Decision 54281(1) was the 1978 amendment to section 4(a) of the Act.

In this case, a drilling rig would be towed from a point at which it had been attached to the seabed of the shelf for the purpose of exploring for resources. The towline would be connected to the drilling rig after all drilling equipment had been lifted from the seabed, but while the drilling rig was held in position by anchor. At this point in time, the drilling rig still would be a coastwise point. See ruling letters VES-3-17-R:CD:C 101523 R, June 19, 1975, and VES-3-15-R:CD:C 101466 R, July 29, 1975, in which a drilling rig which is at anchor on the shelf, whether preparatory to, at the conclusion of, or during activities related to the exploration or exploitation of the shelf, was held to be a "fixed structure" (under the Act before the 1978 amendment) for purposes of the Act while so anchored. However, the action prohibited by 46 U.S.C. 316(a) is that of towing a vessel from a place in the United States to another such place. The actual towing, or movement, of the drilling rig cannot begin until its anchors are lifted from the seabed. Thus, at the time the towing commenced, the drilling rig would not be a coastwise point from which it (the drilling rig) was towed.

We note, however, that "normally" a cap or plug is placed in the hole from which the drilling equipment has been withdrawn. If this capped or plugged hole were considered to be an installation or device permanently or temporarily attached to the seabed for the purpose of exploring for, developing, removing, or transporting resources from the shelf (see the October 22, 1980, ruling letter), the location from which the drilling rig was towed would be a coastwise point. Without more information describing the hole drilled and the process of capping or plugging the hole, we cannot determine whether the capped or plugged hole is such an installation or device and, therefore, a coastwise point.

If the location to which the drilling rig is towed were marked by a marker buoy, it would be considered a coastwise point under the October 22, 1980, ruling letter, as modified by ruling letter VES-3-15 CO: R:CD:C 104983/104880 JM, February 26, 1981. In the latter ruling we held that a point at which no buoy marker is submerged onto or attached to the shelf and no well has been sunk into the seabed is not a coastwise point even if there are buoys or wells in the general vicinity. However, if the destination drilling location were located by the use of satellite navigation equipment on the drilling rig and tugboat, and no device were submerged onto or attached to the seabed of the shelf at the destination location, that location would not be considered a coastwise point.

Accordingly, 46 U.S.C. 316(a) would not be violated in this case if:

1. The capped or plugged drilled hole were not considered to be a device or installation temporarily or permanently attached to the seabed for the purpose of exploring for, developing, removing, or transporting resources from the shelf; *or*
2. No device, such as a marker buoy or wellhead, were submerged onto or attached to the seabed of the shelf at the location to which the drilling rig is towed.

Section 316(a) would be violated if:

1. The capped or plugged hole were considered to be a device or installation temporarily or permanently attached to the seabed for the purpose of exploring for, developing, removing, or transporting resources from the shelf; *and*
2. A device, such as a marker buoy or wellhead, were submerged onto or attached to the seabed of the shelf at the location to which the drilling rig is towed.

The inquirer also requests a ruling as to whether the carriage on board the United States-flag drilling rig of crewmembers, equipment, and supplies of the drilling rig is prohibited by the coastwise laws. We assume that the drilling rig is not qualified to engage in the coastwise trade and, therefore, would be prohibited from transporting passengers and merchandise between United States coastwise point. We have

ruled that crewmembers of a drilling rig who are on board the rig in connection with its business are not considered "passengers". We also have ruled that equipment and stores of a drilling rig for its own use are not considered "merchandise" subject to the provisions of 46 U.S.C. 883. Accordingly, the carriage on the drilling rig of crewmembers of the drilling rig and of equipment and supplies, solely for use on the drilling rig, would not be in violation of the coastwise laws whether or not the points between which they were carried were coastwise points.

Holding:

1. When a United States-flag semi-submersible drilling rig is towed by a foreign-flag vessel—

a. 46 U.S.C. 316(a) is *not* violated if the capped or plugged hole which the rig has drilled at the point from which the rig is towed is not considered a device or installation temporarily or permanently attached to the seabed for the purpose of exploring for, developing, removing, or transporting resources from the shelf; *or* no device is submerged onto or attached to the seabed of the shelf at the location to which the drilling rig is towed.

b. 46 U.S.C. 316(a) is violated if the capped or plugged hole which the rig has drilled at the point from which the rig is towed is considered to be a device or installation temporarily or permanently attached to the seabed for the purpose of exploring for, developing, removing, or transporting resources from the shelf, *and* a device, such as a buoy marker, is submerged onto or attached to the seabed of the shelf at the location to which the drilling rig is towed.

2. Carriage on board a drilling rig not qualified to engage in the coastwise trade of its crewmembers and of equipment and supplies, solely for use on the drilling rig, is not in violation of the coastwise laws, whether or not the points between which they are carried are coastwise points, because they are not considered "passengers" or "merchandise".

Effect on other rulings: Ruling letters 101466, 101523, 104880 and 104983, followed.

(C.S.D. 81-215)

Subject: Drawback: Two or More Consumption Entries Covering the Same Merchandise MAY BE Designated as Bases for Drawback Upon Compliance With the Drawback Laws

Date: May 7, 1981
File: DRA-1-08-CO:R:CD:D
212720 DB

Issue: May more than one consumption entry covering the same articles be designated for drawback upon exportation of that article,

assuming compliance with the manufacturing drawback law and regulations?

Facts: An aircraft manufacturer holds an approved rate of drawback covering, among other aircraft parts, aircraft engines. Two aircraft engines were imported, built up, and then installed in an aircraft. Tests indicated that one of the engines tended to overheat. That engine was removed, exported without benefit of drawback for repairs, and was returned to the United States, duty on the repairs being collected on the value of those repairs pursuant to item 806.20, Tariff Schedules of the United States. After reinstallation in the aircraft and more tests, the aircraft was exported under its own power. The manufacturer requests drawback on the duty paid on the repairs as well as the duty paid on the first consumption entry.

Law and analysis: To be eligible to claim drawback under the manufacturing drawback law, the claimant must show importation, manufacture or production, and exportation. The installation of an engine into an aircraft is considered a manufacture.

Although the drawback regulations do not contemplate the filing of two drawback entries covering the identical shipment of exported articles, there is nothing in the regulations which precludes the designation of two consumption entries covering the identical merchandise in order to obtain a full drawback return on a single claim.

Legal Determination 3740-03 of December 21, 1977, allowed recovery of drawback on duty paid on merchandise which had previously been exported with drawback and was later imported as American goods returned, subject to duty not to exceed the drawback paid.

The file in this case indicates the aircraft engine in question was first imported, built up, and then installed. These operations constituted the manufacturing process necessary to obtain drawback. The removal of that engine from the aircraft to allow for exportation for repair did not negate the manufacturing already accomplished. We have previously held that articles assembled in this country and then exported in a knocked-down or partially disassembled condition to facilitate shipping were entitled to drawback, provided the records of the claimant proved manufacture (unpublished ruling of December 19, 1980 DRA-1-09 RRUCDB 211997).

Naturally, the manufacture necessary to claim drawback must occur after the importation. In the instant case, manufacturing did occur after both importations, since after the second importation, the engine was again installed in the aircraft. We see no legal impediment to the manufacturer's designation of both entries for drawback.

Holding: Two or more consumption entries, covering the same article or merchandise, may be designated as bases for drawback provided a manufacture or production occurs after each importation

and drawback has not previously been claimed on that merchandise or article under any of the entries. This ruling assumes compliance with all requirements of the law and applicable regulations.

(C.S.D. 81-216)

In-Bond Carriers and Cartmen: Application for Designation as a Carrier of Bonded Merchandise Pursuant to 19 U.S.C. 1551

Date: May 12, 1981

File: BON-1-CO:R:CD:D
212840 L

Issue: A firm has applied for designation as a carrier of bonded merchandise pursuant to 19 U.S.C. 1551. If so designated, the firm does not intend to itself transfer the bonded merchandise from one port to another in the United States but only to receive the merchandise for transportation with the use of facilities of other carriers. Several questions are raised:

1. May the firm be designated as a carrier of bonded merchandise?
2. If so, are the requirements of section 112.12(b)(4), Customs Regulations (19 CFR 112.12(b)(4), met by the statement "no routes"?
3. What is the nature of the "intent" to operate as a common carrier as used in section 112.12(b)(1), Customs Regulations (19 CFR 112.12(b)(1))?

Facts: A firm, currently authorized by a Certificate of Public Convenience and Necessity issued by the Interstate Commerce Commission to engage in transportation in interstate and foreign commerce as a common carrier by motor vehicle, has applied for authorization to carry bonded merchandise. The firm apparently does not intend to transport bonded merchandise in its own vehicles from one port to another in the United States, but to receive merchandise for transportation in bond which will be transported with the facilities of other bonded or nonbonded carriers.

The firm is licensed as a cartman and intends to continue to operate as a cartman in the Consolidated Port of Entry. It appears from the firms Certificate of Public Convenience and Necessity that its transportation under that certificate is limited to Customs ports within the Consolidated Port of Entry.

Law and Analysis: Carriers are designated as carriers of bonded merchandise pursuant to 19 U.S.C. 1551 and regulations prescribed by the Secretary of the Treasury. The regulations relating to carriers

of bonded merchandise are found in Parts 18 and 112, Customs Regulations (19 CFR 18 and 112).

As relevant here, 19 U.S.C. 1551 provides that:

Any common carrier of merchandise owning or operating a . . . transportation line or route for the transportation of merchandise in the United States . . . upon application, may, in the discretion of the Secretary, be designated as a carrier of bonded merchandise for the final release of which from Customs custody a permit has not been issued.

Section 18.1(a)(1), Customs Regulations (19 CFR 18.1(a)(1)), provides that:

Merchandise to be transported from one part to another in the United States in bond . . . shall be delivered to a common carrier . . . bonded for that purpose, but such merchandise delivered to a common carrier . . . may be transported with the use of facilities of other bonded or nonbonded carriers . . .

Section 18.8(a), Customs Regulations (19 CFR 18.8(a)), provides in part that:

The initial bonded carrier shall be responsible for shortage, irregular delivery, or nondelivery at destination or port of exit of bonded merchandise, received by it for carriage

Section 112.1(a) and (c), Customs Regulations (19 CFR 112.1(a) and (c)), defines "carrier" and "common carrier"; section 112.11, Customs Regulations (19 CFR 112.11), describes carriers which may be authorized to carry bonded merchandise; and section 112.12, Customs Regulations (19 CFR 112.12), sets out general and special requirements for authorization to carry bonded merchandise.

The general and special requirements relevant here are that the carrier file a bond on Customs Form 3587 in a sum specified by the district director accompanied by a fee of \$50, a certified extract of its articles of incorporation or charter showing that it is authorized to engage in common carriage, and a statement that it is operating or intends to operate as a common carrier. In addition, motor carriers shall file a detailed description of the terminal facilities employed by the principal at the points of origin and destination on the routes covered, and a statement showing that facilities are available for the segregation and safeguarding of the packages designated by the district director for examination from a particular shipment.

If the amount of the bond is sufficient, all documents required have been furnished and are in proper form, and the fee prescribed has been paid, section 112.13, Customs Regulations (19 CFR 112.13), provides that the district director shall authorize the applicant to act as a carrier of bonded merchandise.

In the instant case it appears that the applicant is capable of complying with all of the requirements except that requiring a detailed description of the terminal facilities employed at the points of destination on the routes covered, since the carrier does not have terminal facilities or routes outside of the Consolidated Port of Entry.

It is clear that there would be no question as to the propriety of approving this carrier as a carrier of bonded merchandise were it not for the fact that it is located in a Consolidated Port of Entry and apparently has no routes that go beyond the Consolidated Port of Entry to another port in the United States. The carrier is authorized to engage in transportation as a common carrier between ports of entry in the Consolidated Port of Entry.

Subject to such regulations as the Secretary of the Treasury prescribes, 19 U.S.C. 1551 requires only that a common carrier own or operate a transportation line or route in the United States. Applicant does own or operate a transportation line or route in the United States. There is no requirement in the statute that the common carrier must transport merchandise delivered to it in bond over only those routes which it owns or operates. This is recognized in section 18.1(a)(1), Customs Regulations, which specifically provides that merchandise delivered to a common carrier may be transported with the use of facilities of other bonded or nonbonded carriers. We note also T.D. 47505(1) holding that air facilities may be used for *either all or any part of the carriage* of merchandise delivered to a bonded carrier for transportation in bond (emphasis added); T.D. 47505(2) holding that merchandise delivered to a bonded carrier for transportation in bond may be transported with the use of facilities of a nonbonded carrier; and T.D. 40631 holding in part that if merchandise under any form of transportation entry is delivered to an initial bonded carrier and is subsequently turned over to a nonbonded carrier, the initial carrier would be liable under the terms of its carrier's bond for any shortage or irregularity.

We believe that the subject carrier, if otherwise in compliance with the law and regulations, may be designated as a carrier of bonded merchandise.

The second issue is if the subject carrier qualifies for designation as a carrier of bonded merchandise are the requirements of section 112.12(b)(4), Customs Regulations (19 CFR 112.12(b)(4)), met by the statement "no routes"?

Section 112.12(b)(4) requires a detailed description of the terminal facilities employed by the principal at the points of origin and destination on the routes covered and a statement that facilities are available for the segregation and safeguarding of packages designated

for examination. Since the applicant is operating as a motor carrier, we assume it has one or more terminals at which to receive merchandise delivered to it. A description of these terminal facilities at the point of origin and a statement that facilities are available for the segregation and safeguarding of examination packages should fulfill the requirement.

You also inquire as to the effect of the "intent" of a firm to engage in common carriage, as discussed in Headquarters Ruling BON-1-00: R:CD:D, 212389, dated January 6, 1981. It is suggested that if a firm presents a copy of its charter or articles of incorporation showing that it is authorized to engage in common carriage, and states that it intends to operate as a common carrier, it would qualify upon presentation of an adequate bond and the \$50 application fee. Since, it is stated, there is no definition or limitation as to what constitutes "intent", any person could establish a corporate shell, state an intent to operate as a common carrier, and Customs would be compelled to approve the application upon receipt of a bond and the fee.

We do not agree. Corporations are created by the legislatures of each state with power to create corporations. The powers of all corporations are limited to those mentioned in their charters or in the general acts under which they are created. With these are those necessarily implied from what are expressly mentioned, both as to what they may do and the manner of doing it. Grants of corporate rights, privileges and franchises are always considered to be subject to police powers of the state, and the state may enact such laws as come within its police powers even though corporate rights seem to be interfered with. Where there is reasonable doubt about the meaning of a charter provision or the extent of the corporate powers, the doubt is resolved in favor of the public interest. In some cases, a corporation is authorized to do an act by its charter but may not lawfully do so until some document has been filed with a public official or administrative body, or until consent has been obtained. For example, an interstate railroad, which has the power by virtue of its certificate of incorporation to undertake an extension of its line, may not legally do so without obtaining a certificate of convenience and necessity from the Interstate Commerce Commission. The failure to obtain the certificate does not make the act *ultra vires*; it is an illegal act as it would be an illegal act by an individual.

More to the point, however, we believe that the requirement of section 112.12(b)(1) that a carrier "shall . . . file a statement that it . . . intends to operate as a common carrier" must be read in conjunction with the provision of 19 U.S.C. 1551(1) that "any common

carrier owning or operating . . . (a) transportation line or route . . . in the United States may . . . be designated as a carrier of bonded merchandise. . . ." A firm which has established its status as a common carrier, either by evidence that it is recognized as a common carrier by an appropriate governmental agency or by evidence that establishes that it is in fact a common carrier, may own but not currently operate a route or line. A statement that the firm intends to operate the line or route as a common carrier upon designation as a carrier of bonded merchandise, for example, would be sufficient to support the application. Since intent is a state of mind, it must be inferred from the facts and circumstances.

Accordingly, we perceive intent, as used in section 112.12(b)(1) and coupled with 19 U.S.C. 1551(1), to refer to the intent to engage in the authorized transportation of merchandise in the reasonably foreseeable future. The burden of establishing intent would be upon the applicant.

This interpretation is not relevant to the subject case since the applicant has established that it is recognized as a common carrier and that it does operate a line or route for the transportation of merchandise in the United States.

Holding

1. A firm, recognized as a common carrier, but not operating lines or routes outside of a Consolidated Port of Entry, may be designated as a carrier of bonded merchandise pursuant to 19 U.S.C. 1551(1) for the purpose of receiving merchandise to be transported with the use of facilities of other bonded or nonbonded carriers, if otherwise in compliance with the law and regulations. As provided by section 18.8, Customs Regulations (19 CFR 18.8), that firm, as the initial bonded carrier, shall be responsible for shortage, irregular delivery, or non-delivery at destination or port of exit of bonded merchandise received by it for carriage.

2. Under the circumstances, the requirements of section 112.12(b)(4), Customs Regulations (19 CFR 112.12), may be met by the submission of a detailed description of the applicants terminal facilities at the points of origin, and a statement that facilities are available for the segregation and safeguarding of examination packages.

3. The intention to operate as a common carrier, referred to in section 112.12(b)(1), Customs Regulations (19 CFR 112.12(b)(1)), refer to the intention of a common carrier described in 19 U.S.C. 1551 to operate a line or route it owns in the United States for the transportation of merchandise. The burden of establishing intent is upon the applicant and must be inferred from the particular facts and circumstances.

(C.S.D. 81-217)

Vessels: The Transfer of LASH Barges Carrying Merchandise From One Foreign-Flag Vessel to Another at A U.S. Port

Date: May 20, 1981
File: VES-3-07-CO:R:CD:C
105070 DR

This ruling concerns the transfer of LASH barges carrying merchandise from one foreign-flag vessel to another at a United States port.

Issue: Whether the transportation of LASH barges carrying merchandise by foreign-flag mother vessel from one U.S. port to a succeeding U.S. port for transfer there to another mother vessel for transportation to a foreign port is in violation of title 46, United States Code, section 883.

Facts: (a company) operates a LASH service which calls at U.S. Atlantic and Gulf ports and European ports in the United Kingdom and on the continent. Three foreign-flag mother vessels are involved in this service: the Liberian-flag (vessel) and (vessel) and the Netherlands-flag (vessel). The first two vessels call at New Orleans, and ports in the United Kingdom and on the continent. The third vessel calls at U.S. Atlantic ports, New Orleans, and ports on the continent.

Because the three mother vessels do not call at the same U.S. and foreign ports, (co.) states it is desirable on occasion that LASH barges carrying merchandise destined for a foreign port be transferred from the mother vessel on which they initially had been loaded in the United States to another mother vessel at a succeeding U.S. port for transportation to Europe. The barges would be placed in the water at the second U.S. port and moved by tug to a fleet anchorage while awaiting lading aboard the second mother vessel.

For example, a barge carrying merchandise destined for the United Kingdom would be laded aboard the (vessel) in Savannah because the (vessel) is the only mother vessel operated by (co.) to call at Savannah. However, the (vessel) doesn't call at ports in the United Kingdom. The barge, therefore, would be transported to New Orleans (the one U.S. port at which each mother vessel calls), where it would be unloaded from the (vessel) and put on board one of the other two vessels for transportation to the United Kingdom. A transfer also may be made at New Orleans in the course of a reverse procedure on an inward movement.

Because each mother vessel involved is foreign-flag, local Customs officials have questioned whether the transhipment at New Orleans from one mother vessel to another of a LASH barge with merchandise transported from a U.S. Atlantic port, or conversely, the trans-

shipment at a U.S. Atlantic port of a LASH barge transported from New Orleans, is in violation of the coastwise laws.

Law and Analysis: Title 46, United States Code, section 883, provides in pertinent part, with exceptions not applicable here, that a foreign-flag or foreign-built vessel is prohibited from transporting merchandise between points embraced within the coastwise laws of the United States.

Vessel Operator's Argument

1. The proposed operation is part of a continuous movement of a foreign-flag vessel (the LASH barge) in foreign commerce, whether the barge is on board a mother vessel or afloat in the water. (co.) cites the cases of *Agrico Chemical Co. v. S.S. ATLANTIC FOREST*, 459 F. Supp. 638, 651 (1980), and *Wirth Limited v. S/S ACADIA FOREST*, 537 F. 2d 1272, 1284, (1976). In these cases, a shipper brought an action against the carrier under the Carriage of Goods by Sea Act (COGSA) for damage to the cargo resulting from a collision between a LASH barge and a lock and between a LASH barge and other LASH barges, respectively. COGSA defines "ships" as "any vessel used for the carriage of goods by sea" (46 U.S.C. 1301(d)). In each case, it was held that a LASH barge is a "ship" under COGSA.

Pursuant to section 4.90 of the Customs Regulations, a foreign vessel including a LASH barge or a LASH barge mother vessel, may pick up or discharge cargo at various coastwise points, as long as the vessel and its cargo are engaged in a continuous movement in foreign commerce. The transfer of LASH barges between mother vessels is part of a continuous movement in foreign commerce and is not a violation of section 883 of title 46.

2. In enacting the 1971 amendment (seventh proviso) to section 883, which permits the transshipment of merchandise between foreign LASH barges in the United States, Congress intended to remove coastwise trading restrictions on either the LASH barge or its cargo in order to permit more efficient utilization of LASH barges in the United States.

3. The sixth proviso of section 883 authorizes the Secretary of the Treasury to prescribe regulations to permit, on the basis of reciprocity foreign-flag vessels to transport empty LASH barges between points in the United States embraced within the coastwise laws. The proviso reflects the Congressional intent that the through continuous movement of LASH barges in the foreign commerce should not be considered coastwise transportation under section 883.

Customs Position

1. LASH barges are considered to be vessels when in use as a means of transportation on water, or when in the water empty and capable

of being used as a means of transportation. Section 4.81(g), of the Customs Regulations (19 CFR 4.81(g)), provides for the movement of LASH barges in this country while being operated in the foreign trade of the United States to either offload foreign cargo or to take on cargo for export. These procedures are allowed pursuant to the provisions of 19 U.S.C. 1443 and 1444, and 46 U.S.C. 313 and 314.

The vessel movements described above involve either an unloading at more than one point in the United States of merchandise which was laden by the vessel in a foreign country, or a lading of merchandise at more than one port in the United States which is to be unladen from the vessel in a foreign country. Neither of these procedures is considered a transportation of merchandise in coastwise trade. However, the Customs Service has held consistently that if merchandise, although in a through movement in foreign commerce, is laden at one United States coastwise point and unladen at another such point, the intervening transportation is coastwise trade. The case affirming this view is *In re Laidlaw et al.*, 42 Fed 401 (1890), the predecessor to The CNERIE, cited by you in footnote 1 of your letter of March 6.

The Customs Service considers that if a LASH barge carrying merchandise is carried on board a foreign-flag mother vessel, the merchandise is transported in the mother vessel and would be carried in violation of section 883 of title 46 if laden at one U.S. port and unladen at another U.S. port.

2. In enacting the 1971 amendment (7th proviso) to section 883, the Congress recognized the Customs Service ruling that if cargo is transferred from one vessel to another (in this case the vessels were LASH-type barges), although the cargo is in an inbound or outbound continuous through movement in foreign commerce, the unloading at a U.S. port of merchandise which had been transshipped onto a foreign barge at another U.S. port would have been transported within the contemplation of section 883.

In the light of this Customs ruling, it was necessary to enact an exception to the general prohibition of the statute. However, the exception is granted on the basis of reciprocity and merchandise so transshipped between barges of countries which do not grant reciprocity, even though on through movements in foreign commerce, would still be considered to have been transported in violation of section 883. Merchandise transferred between vessels other than LASH-type barges and therefore not within the exception, would be in violation of the statute, regardless of the country of registry of the vessel.

3. The sixth proviso to section 883 provides, in pertinent part, that vessels not qualified to engage in the coastwise trade may transport *empty* LASH-type barges between coastwise points, provided that,

in the case of foreign vessels, the country of the barges' registry extends reciprocal privileges to U.S. vessels, that the barges are owned or leased by the transporting vessel's owner or operator and are transported for the owner or operator's use in handling cargo in the foreign trade. Thus, although LASH-barges are in a foreign movement, it was necessary to enact an exception to the general coastwise prohibition in order to enable them to be taken aboard an unqualified mother vessel at one domestic port and unladen at another such port. If the coastwise laws did not apply to LASH-type barges, even those moving in foreign commerce, the Congress would not have deemed it necessary to enact the proviso. Limiting the application of the seventh proviso to empty barges reinforces the Customs Service position that LASH barges containing merchandise laden at one U.S. port and offloaded at another U.S. port are in violation of 46 U.S.C. 883.

Holding: The unloading of merchandise at a place embraced within the U.S. coastwise laws from a vessel not qualified to engage in the coastwise trade, which was laden on board that vessel at another place embraced within the U.S. coastwise laws, is prohibited by 46 U.S.C. 883, notwithstanding that (1) the merchandise is in a LASH-type barge and irrespective of the fact that (2) the coastwise transportation is a part of a through movement of the merchandise in the foreign commerce of the United States.

(C.S.D. 81-218)

Drawback: The Applicability of the "Use" Requirement of the Substitution Drawback Law to Members of an Incorporated Agricultural Cooperative Marketing Association

Date: May 20, 1981

File: DRA-1-CO:R:CD:D
212830 NK

Issue: Whether members of an incorporated Agricultural Cooperative Marketing Association may be considered as partners to satisfy the "use" requirement of the substitution drawback law.

Facts: Corporation X, incorporated as an Agricultural Cooperative Marketing Association under Chapter 618, of the Florida Statutes, consists of seven members each of which, in turn, is also incorporated as a separate legal entity under Chapter 618. All seven members own processing plants and process orange juice products with the use of concentrated orange juice for manufacturing. Corporation X under its articles of incorporation functions both as a supply cooperative as well as a marketing cooperative. Five of its members, Corporations A, B, C, D and E each has a similar Uniform Marketing Contract with

Corporation X appointing Corporation X as sole and exclusive agent for the distribution, selling, and marketing of frozen and unfrozen, concentrated and single strength citrus juices belonging to or controlled by the contracting members. The other two members, Corporations F and G, market their own products.

Member A imported or obtained imported duty-paid concentrated orange juice for manufacturing and used it to produce other orange juice products for domestic consumption. Member B obtained domestic concentrated orange juice for manufacturing of the same kind and quality as the imported concentrate and used it to produce other orange juice products for exportation. Corporation X filed drawback entries under section 1313(b), title 19, United States Code on the basis of a principal and agent relationship outlined in Treasury Decision 55207(1). Since it was not shown that Corporation X owned the imported and domestic substituted merchandise used to produce new products as one of the requirements under T.D. 55207(1), drawback was not allowed.

Corporation X contends that we should consider Corporation X as a single entity for five of its members, Corporations A, B C, D and E, in the nature of a partnership to satisfy the use requirement of the substitution drawback law. The theory of partnership is based upon the articles of incorporation and by-laws of Corporation X and the Uniform Marketing Contracts between Corporation X and its members, Corporations A, B, C, D, and E.

Law and analysis: T.D. 55207(1) concerns the principal and agent relationship to satisfy the use requirement of the substitution drawback law. It must be shown that the imported designated and the substituted domestic merchandise are owned by the principal and while an agency relationship may satisfy the use requirement it must also be shown that it is a bona fide relationship cognizable for other business purposes and not a mere sham to create a climate for drawback.

A partnership may be a drawback claimant. In some jurisdictions two corporations may form a partnership. While manufacturing performed by a partnership may be shown to satisfy the use requirement for drawback, such a partnership, like the principal and agent relationship, must be a bona fide partnership cognizable for other business purposes and not a mere sham to create a climate for drawback.

Chapter 618 of the Florida Statutes, in concert with Federal Statutes, permits an association of farmers, growers and producers of agricultural products to incorporate as an Agricultural Cooperative Marketing Association. These laws permit American farmers and growers to

incorporate and engage in cooperative activities such as growing, harvesting, producing, and marketing of their agricultural products with certain protection from the antitrust laws and obtain the advantages of corporate benefits and liabilities rather than those of a partnership.

An incorporated cooperative association is a complete legal entity, separate and apart from its members, in the same manner and to the same extent as any other ordinary corporation and cooperatives may usually sue and be sued as entities, by virtue of specific statutory authorization (See 18 Am Jur 2nd, Cooperative Associations 3.). It is doubtful, nor is it claimed under Florida law, that membership in an incorporated Agricultural Cooperative Marketing Association creates a partnership between some or all of its members.

The standard Uniform Marketing Contract between Corporation X and each member, is also cited to support a partnership. The covenants in the contract designate Corporation X as "the sole and exclusive agent of Member, said agency being coupled with an interest for the distribution, selling, and marketing" of certain products "belonging to or controlled by Member". Corporation X agrees to sell the product pooled with the products delivered by other members and non-member patrons of Corporation X and "to pay over ratably as the agreed price due Member" less authorized deductions.

It is noted that under the covenants, title to the product remains with the member who warrants good and lawful authority to sell and transfer the product at the time of delivery to Corporation X and to defend the title against all persons, claims, and liens. In the event the member fails to deliver the product, the covenants provide for settlement by the payment of liquidated damages on a percentage basis. Finally, any loss that may be suffered on account of inferior or damaged condition of the product at delivery, shall be charged against the member individually. Thus, the members do not share "ratably" in the loss incurred, if any, in the acquisition of imported designated or domestic substituted merchandise and their use in production of new articles for drawback. We are satisfied that the contract does not create a bona fide partnership to satisfy the use requirement of the substitution drawback law.

Holding: Mere membership in an incorporated Agricultural Cooperative Marketing Association does not create a partnership consisting of all or part of its members to satisfy the use requirement of the substitution drawback law. It must be shown that a bona fide partnership existed between the members rather than one in the nature of a partnership to satisfy the use requirement.

(C.S.D. 81-219)

Drawback: Rolls of Fabric Cut to Smaller Rolls is a Permitted Operation Under 19 U.S.C. 1313(j) Rolls Cut to Sized Pieces is Considered a Manufacturing Process Under 19 U.S.C. 1313(a)(b)

Date: May 20, 1981
File: DRA-1-CO:R:CD:D
212892 DB

Issues

1. Does the cutting of textiles imported in rolls into two or three smaller rolls, constitute a manufacture or production for purposes of the manufacturing drawback law? If not, are the smaller rolls eligible for same condition drawback if exported?
2. Does the cutting of smaller specific lengths from the imported rolls, and the subsequent packaging of the lengths with four wooden stretchers and assembly instructions to form a kit, constitute a manufacture or production for purposes of the manufacturing drawback laws? If not, are the smaller lengths eligible for same condition drawback if exported?

Facts: An importer/seller of textiles purchases and imports textiles in 30-meter rolls. After importation, these rolls are cut into two or three smaller rolls and sold. The smaller rolls are sold according to yards or "repeats," i.e. number of times a design on the roll is repeated. Because some of the rolls are sold to foreign buyers, the importer wants to know whether the cutting operation is a manufacture under 19 U.S.C. 1313(a) or whether the smaller rolls, when exported, will be eligible for same condition drawback, 19 U.S.C. 1313(j).

The importer further asks whether the cutting of specific short lengths of fabric to be packaged with four wooden stretchers and instructions to form a kit, is a manufacture/production or is a permitted operation under the same condition drawback law.

Law and analysis

1. We have consistently held that a sole process of cutting metals in coils into smaller lengths does not constitute a manufacture or production within the meaning of the manufacturing drawback law (see Bureau Letter 731.1 of December 7, 1956 T.D. 54272-0). On the other hand, the cutting of material or metal both lengthwise and widthwise to specifications *according to customer order to render the cut pieces suitable for a specific use* does constitute a manufacture. Thus the cutting of coiled electrolytic tin plate in coils to various sizes, dedicating those sizes to use in the manufacture of particular sized cans, was held to be a drawback manufacture (Bureau Letter of June 30, 1955 T.D. 53839-A).

In regard to textiles, we have held that the cutting of textiles into squares to use in the production of handkerchiefs was not a manufacture, and that the cutting of unfinished neckties from imported fabric likewise was not a manufacture.

It is clear, based on the foregoing precedents, that the cutting of a 30-meter textile roll into two or three smaller rolls, whether or not to customer order, does not dedicate the smaller rolls to any particular use, and is therefore not a manufacture or production for purposes of drawback.

2. The same condition drawback law, 19 U.S.C. 1313(j), requires that merchandise be exported (or destroyed under Customs supervision) in the same condition as imported. The merchandise cannot be subjected to a manufacture or production as contemplated by the manufacturing drawback law, but may be subjected to incidental operations. We must decide whether the cutting in this case is an "incidental operation" allowed under the law.

In previous ruling, while holding that such minor cutting operations were not manufactures or productions, we held that such operations could be performed in manipulation warehouses pursuant to 19 U.S.C. 1562. The legislative history for the same condition drawback law indicates one prime reason for its passage was to allow importers to avoid absorbing duty costs on merchandise to be exported without undergoing manufacture or production without the importers' having to resort to use of temporary importation bonds, bonded customs warehouses, or foreign trade zones (see Senate Rept. 999. 96th Cong. p.23 (1980)).

That is not to say the Congress intended that the law eliminate the need for manipulation warehouses, but that manipulations involving minor operations which do not change the basic character of merchandise can be conducted within the purview of the same condition drawback law. In this regard, the separation of one large roll of textile fabric into two or three smaller ones does not change the basic characteristics of the fabric itself. The cutting is akin to the removal for exportation of a certain number of gallons of petroleum or chemicals from a tank of that imported material. We are of the opinion the cutting involved in this case is a permitted operation under 19 U.S.C. 1313(j).

2. As indicated above, the cutting of material to a specific length to make it suitable for and dedicated to a specific use, constitutes a manufacture for drawback purposes. Previous rulings also indicate that articles which are assembled or placed with other articles to form a finished marketable product, the absence of any of the assembled articles rendering the product unsafe, unusable for intended use, or substantially incomplete, constitutes a manufacture of the individual

articles. Further, articles not necessary for the safe use of a finished product, but normally found with that product or expected to be found with that product, have been considered by the courts to have been subjected to manufacture when they are placed with or assembled to the finished product. Thus, the mounting of imported tires and tubes on American wheels to be placed as spare tires in finished automobiles was considered a manufacture under 19 U.S.C. 1313(a) (*C. J. Holt & Co., Inc. v. United States*, 27 Cust. Ct. 88, C.D. 1352(1951)).

In this case, without the specifically cut-to-size fabric, we are left with four wooden stretchers and useless instructions. In short, that which the importer set out to produce, a textile kit, has not been produced absent the fabric. The cutting of the fabric to specific size and placing it with the other articles to form a kit together constitute a manufacture for purposes of the manufacturing drawback law.

Holding

1. The cutting of a 30-meter roll of textile fabric into two or three smaller rolls is a permitted operation under 19 U.S.C. 1313(j) and the smaller rolls upon exportation in conformance with the procedures and regulations are eligible for same condition drawback.

2. The cutting of the larger rolls into smaller specifically sized pieces of fabric, which are then packaged with wooden stretchers and instructions to form a kit, constitutes a manufacture of that fabric for purposes of the manufacturing drawback laws, 19 U.S.C. 1313 (a) and (b).

(C.S.D. 81-220)

Drawback: Accounting Procedures When Section 22.4 of the Customs Regulations Is Applied

Date: May 20, 1981
File: DRA-1-CO:R:CD:D
213007

Issue: If a drawback claimant under direct identification drawback (19 U.S.C. 1313(a)) has commingled fungible merchandise in its inventory which was placed therein prior to the establishment of its drawback program, how does it comply with the requirement that the manufactured articles be exported within 5 years after importation of the duty-paid merchandise?

Law and analysis: Section 22.4(f) reads in part as follows:

When identification is made against two or more lots of imported merchandise of different dutiable values or subject to different rates of duty, or against two or more lots of drawback products subject to different allowances of drawback, the draw-

back shall be based first upon the lot or lots of the lowest dutiable value, rate of duty, or drawback allowance, as the case may be, then upon the lot or lots of the next higher dutiable value, rate of duty, or drawback allowance, and so on from lower to higher until all the lots have been accounted for.

This section provides a method of identification when fungible merchandise (commercially identical merchandise) is commingled. There is no requirement that the merchandise physically leave the inventory in accordance with the assumptions made under 22.4(f). In fact, if it is known how merchandise actually is removed from inventory, the merchandise would probably not be fungible and certainly it would be needless to make assumptions. The procedure required under 22.4(f) is best described with an example.

Between January 2, 1970 and January 2, 1981, claimant imported on January 2nd of each year 100 widgets with the values and rates of duty indicated below.

Date	Value per widget	Rate of duty (percent)	Number
January 2, 1970-----	\$10	10	100
January 2, 1971-----	4	10	100
January 2, 1972-----	5	10	100
January 2, 1973-----	5	10	100
January 2, 1974-----	10	10	100
January 2, 1975-----	4	10	100
January 2, 1976-----	10	10	100
January 2, 1977-----	6	10	100
January 2, 1978-----	8	5	100
January 2, 1979-----	3	5	100
January 2, 1980-----	5	5	100
January 2, 1981-----	7	2	100

When claimant establishes its drawback program on September 1, 1980, it had 850 widgets in inventory. We assume that prior to this date all widgets were removed on a FIFO basis, there being no drawback program. Thus the 1970, the 1971, and half of the 1972 importation were no longer in the inventory when the drawback program started.

On December 1, 1980, another 150 widgets are removed for domestic sales. The FIFO principle applies and thus the remainder of the 1972 and the 1973 importations are removed from inventory. The next withdrawal of 100 widgets on February 1, 1981 is for drawback purposes and thus we select the entry which gives the lowest drawback.

Since the merchandise must be used within 5 years there is no drawback on the 1974 entry and consequently this entry is selected. When a withdrawal of 200 units is made on February 10, 1981, we select for the same reason the 1975 and 1976 entries.

On March 1, 1981, another 100 widgets are withdrawn for drawback purposes. The lowest drawback would now be the 1981 entry, and thus would be the next removed.

Holding: The principle enunciated in section 22.4(f) of the Customs Regulations applies to accounting records, not physical objects. Merchandise which was in commingled inventory 5 years or more prior to the establishment of a drawback program receives no drawback since articles made from it cannot be exported within 5 years of importation of the merchandise.

(C.S.D. 81-221)

Classification: Oil Well "Sucker Rods"

Date: May 27, 1981

File: CLA-2 CO:R:CV:G
065576 BB

This is in response to your letter of October 4, 1980, requesting the tariff classification of oil well "sucker rods." You state that these sucker rods are 25 feet long, made from AISI 4142 round alloy steel rod in diameters of 3/8, 7/8 and 1 inch. The ends of the sucker rods are hot forged and threaded so that they can be joined together with couplings.

A sucker rod is used in connection with pumping oil from an oil well. Individual sucker rods are coupled together to form a continuous rod thousands of feet long. Small rods, called pony rods, are attached to the upper end of the continuous rod to adjust its overall length to the depth of the well. One end of the continuous rod is connected to a pumping unit at the well surface and the other is connected to piston or plunger that has been lowered into the well.

Customs has an established practice of classifying sucker rods and pony rods under the provision for machinery parts not containing electrical features and not specially provided for in item 681.39, Tariff Schedules of the United States (TSUS). In T.D. 56120 (57) Customs explained this classification by saying that sucker rods were used to transmit power from one pump to another pump. In C.I.E. 616/64 Customs described a sucker rod as a shaft extension between an engine and a pump, but not designed to be used with any particular type of pump and engine.

As a result of several inquiries about this type of merchandise,

Customs has conducted a review of its practice on the classification of sucker and pony rods. The classification issue presented is whether such rods are more specifically provided for under the provision for pumps for liquids and parts thereof, other, in item 660.97, TSUS.

The American Petroleum Institute (API) indicates that sucker rods are designed for and solely used in sucker rod pumps. API's "Facts About Oil" states that a "sucker rod pump" is a surface pump connecting the power source by means of a rocker arm assembly to a rod extending into the well, which is attached to a valved plunger.

Heading 84.10 of the Brussels Nomenclature covers pumps for liquids. Under the subheading for parts of such pumps, rods specially designed to connect and drive the piston in pumps placed at some distance from the prime mover such as sucker rods, are specifically included.

Based on this information we have determined that the surface pumping unit, the pony and the sucker rods, and the down-well valved plunger constitute a single entity used for pumping oil. Because sucker rods are designed for and chiefly used with this pump and because they are essential to its operation, they are properly considered a "part" of the pump for tariff purposes.

Accordingly, sucker rods and pony rods are classifiable under the provision for pumps for liquids and parts thereof, other, in item 660.97, TSUS, dutiable, as products of Japan, at the column 1 rate of 451 percent ad valorem.

T.D. 56120 (57), C.I.E. 616/64, ORR 574/69, and HRL 066475 are hereby overruled. HRL 065582 wherein Customs classified the surface pumping unit or "pump jack" used with a sucker rod pump as a "pump for liquids" in item 660.97, is modified because that unit is properly considered a "part of a pump for liquids", classifiable under the same provision.

(C.S.D. 81-222)

Subject: Drawback: Containers Such as Boxes, Cans and Bottles Imported for Packaging of Merchandise Are Not Eligible for Same Condition Drawback Under 19 U.S.C. 1313(j)

Date: May 27 1981
File: DRA-1-09-CO:R:CD:D
213010 DB

Issue: Are containers such as cardboard boxes, bottles, and cans imported into the United States for filling with merchandise eligible for same condition drawback under 19 U.S.C. 1313(j) upon exportation?

Facts: Cardboard boxes, set up or in "knocked-down" condition, metal cans (and presumably lids for them), bottles, and other containers are to be imported from Canada for filling with merchandise such as processed foods and beverages, or produce. After packing, the containers are exported with the merchandise.

Law and analysis: Section 201(a) of Public Law 96-467, the enabling legislation for the same condition drawback law, 19 U.S.C. 1313(j), provides:

(2)(j) **SAME CONDITION DRAWBACK.**—(1) If imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation—

(A) is, before the close of the three-year period beginning on the date of importation—

(i) exported in the same condition as when imported, or
(ii) destroyed under Customs supervision; and

(B) is not used within the United States before such exportation or destruction: . . .

The legislative history for the legislation indicates a prime reason for its enactment is to allow importers to avoid absorbing duties on merchandise imported for other than manufacture or production without resorting to use of temporary importation bonds, Customs bonded warehouses, or foreign trade zones (Senate Rept. 999, 96th Cong., p. 23). However, the history points out that the new law also provides that in order to "be eligible for this drawback, the merchandise may not be used within the United States before such exportation . . ." (*ibid.*). The drawback provision allows a refund of duties only "if the merchandise was *never used* in the United States". Incidental operations performed on the merchandise itself are allowed as "opposed to permitting the imported merchandise to be used while in the United States to, for example, test other materials (*ibid.*, p. 24).

In *Swalley v. Addressograph Multigraph Corporation*, 158 F. 2d 51 (7th Cir. 1946 Cert. den. 1947), the Court stated that the words "use" and "to be used" are to be given their ordinary meaning:

To employ . . . to put into operation, to cause to function . . .

(to) employ for the use for which they were manufactured and intended (158F. 2d, at 54).

Likewise, in *Berry-Kofron Dental Laboratory v. Smith*, 345 Mo. 922, 137 S.W. 2d 452 (S. Ct. Mo. 1940), the Court held that "use" means a ". . . continued possession and employment of a thing to the purpose for which it was adapted," and citing *Reznar v. Nudelman*, 307 Ill. 180, 18 N.E. 2d 219, that "use" should be taken at its "usual and popular meaning". (137 S.W. 2d, at 454-5).

In its primary meaning, "use" as a noun may signify the act of employing anything, the act of using or applying an object to one's

service. Further, the verb "to use" means to employ in some manner appropriate to the object to accomplish an end, which, without the use of the object, would not be accomplished. (*Turner v. Smith*, 269 Ky. 880, 108 S.W. 2d 1019, at 1020 (S. Ct. Ky. 1937).

The boxes, bottles, cans, etc. to be imported in this case are to be employed or used for their intended purpose, i.e. to act as containers for the transportation and ultimate sale of merchandise. Nothing *per se* is being done to these containers: they are being put to use in their primary function, which clearly excludes them for eligibility for drawback under 19 U.S.C. 1313(j). See also *McJimsey v. City of Des Moines, et al.*, 231 Iowa 693, 2 N.W. 2nd 65 (S. Ct. Iowa 1942), *Cypress Lawn Cemetery Ass'n v. City and Country of San Francisco*, 284 P. 506 (1930), and *Panhandle Gravel Co. v. Wilson*, 248 S.W. 2d 779 (1952).

Holding: Containers such as boxes, cans, and bottles, imported for packing of merchandise, are not eligible for same condition drawback.

(C.S.D. 81-223)

Subject: Customs Entry Bond: A Surety on a Customs Entry Bond Is Liable for Payment of Duty Determined To Be Due Under 19 U.S.C. 1592

Date: May 28, 1981
File: CO:R:CD:D
212957 WR

Issue: Whether a surety on a Customs bond is liable for payment of duty under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), since that section requires restoration of any lawful duty lost as a result of a violation?

Facts: No facts were presented.

Law and analysis: Section 110(a) of the Customs Procedural Reform and Simplification Act of 1978, Act of October 4, 1978, Pub. L. 95-410, Sec. 110(a), Stat. 888, amended 19 U.S.C. 1592 by adding a new paragraph (d) which provided:

"Notwithstanding section 514 of this Act, if the United States has been deprived of lawful duties as a result of a violation of subsection (a), the appropriate Customs officer shall require that such lawful duties be restored, whether or not a monetary penalty is assessed.

The Commissioner of Customs stated that he was not clear on what paragraph (d) was intended to accomplish. Hearings before the House Subcommittee on Trade on H.R. 8149 (95th Cong., 57 (July 19,

20, 21, and 22, 1977.) The Commissioner then stated the Customs Service interpreted the provision as allowing the Government to collect all duties (not previously collected) arising out of the discovery of a section 592 violation, limited only by the five-year statute of limitations, even though liquidation of the entries had become final under any other provision of law. Hearings *Supra*, 57. The Commissioner recommended that the word "shall" be used instead of the word "may" in the provision. Hearings *Supra*, 58. That recommendation appears to have been adopted. The House Report on the law states that the provision was intended to codify the existing administrative practice of mitigating claims for forfeiture value on condition that any loss of revenue is deposited with the United States. H. Rept. 621, 95th Cong., 16 (1977). The Senate Report repeats the House explanation. S. Rept. 778, 95th Cong. (1978).

Section 500 of the Tariff Act of 1930, as amended (19 U.S.C. 1500), provides the authority for the Customs Service to appraise and classify merchandise in an entry and to liquidate that entry. Section 504 of the Tariff Act of 1930, as amended (19 U.S.C. 1504), sets a time limit for liquidating an entry unless the period is extended by the Secretary.

Section 514, of the Tariff Act of 1930, as amended (19 U.S.C. 1514), sets a time limit for a liquidation to bind all parties. Under 19 U.S.C. 1592(b), the Customs Service is required to notify an alleged violator, among other things, of the estimated loss of revenue, which presupposes that the Customs Service first determines that loss.

It is not clear whether Congress intended that a Customs officer liquidate an entry under 19 U.S.C. 1500 in order to determine the loss of revenue attributable to a violation of 19 U.S.C. 1592(a) on the entry. If that was the intent, no steps were taken to stay the operation of 19 U.S.C. 1504, and there is no provision that corresponds to section 501, 520, or 521 of the Tariff Act of 1930, as amended (19 U.S.C. 1501, 1520, or 1521), which expressly authorizes the reliquidation of an entry. Instead, Congress merely stopped the binding effect of 19 U.S.C. 1514. Taken together, the most reasonable interpretation of 19 U.S.C. 1514 and 1592(d) is that despite expiration of the time period for challenge of a liquidation, the Customs Service has authority to calculate a duty loss attributable to a violation under 19 U.S.C. 1592(a) on a liquidated entry and to demand payment of that duty loss. This interpretation has support from the fact that Congress intended 19 U.S.C. 1592(d) to codify an existing practice under which the Customs Service collected duties not previously paid that would have been collected but for the violation. Thus, the authority for calculating the duty loss attributable to a violation must be within 19 U.S.C. 1592.

Under 19 U.S.C. 1592(d) the Customs Service has authority to demand restoration of that lost duty. A surety is jointly liable with a bond principal for payment of any duty due when demanded. For example, with respect to consumption entries, condition (8) of the General Term Bond for the Entry of Merchandise (CF 7595) secures the payment, on demand, of all duties found legally due and unpaid on all consumption entries charged against the bond. Similar provisions exist on other bonds used to cover entry of merchandise. See CF 7751, condition (1); CF 7553, condition (1); and T.D. 80-173, condition (8). The principal and surety have agreed to pay the amount of duty legally due on an entry on demand without specifying the authority for determining the amount of duty due or the authority for making the demand for payment. To exercise its rights under the bond, the Customs Service must show only that the duty was legally due and make a lawful demand. Under 19 U.S.C. 1592(b) the Customs Service is authorized to calculate the amount of duty lost by a violation and to notify the violator of that calculation. Under 19 U.S.C. 1592(d) the Customs Service has authority to demand that lost duty. The Customs Service has authority to calculate the amount of duty due and to demand payment thereby making the surety liable for payment under the bond.

Holding: A surety on a Customs entry bond is liable for payment of duty determined to be due under 19 U.S.C. 1592.

(C.S.D. 81-224)

Temporary Importations Under Bond: The Dutiability of Valuable Wastes in Lieu of Exportation or Destruction

Date: June 3, 1981
File: CON-9-CO:R:CD:D
212725 L

Issue: Public Law 96-609 amended Headnote 2(b)(ii) of subpart C, Part 5, Schedule 8, Tariff Schedules of the United States (TSUS), to permit that, in lieu of the exportation or destruction of valuable wastes, duties may be tendered on such wastes at rates of duties in effect for such wastes at the time of importation. The following issues are raised:

1. What documentation is required to cancel the bond obligation for valuable waste products resulting from the processing of articles admitted temporarily free of duty under bond (TIB) which are not exported or destroyed and for which duties are not tendered since the valuable wastes are free of duty?
2. In such a situation, is an affidavit from the processor or a duty-free consumption entry adequate to satisfy the bond obligation?

3. Where both foreign articles admitted under TIB and domestic articles are processed in massive amounts, how can Customs control the possible combining of foreign and domestic valuable wastes?

4. If, prior to admission under TIB, the shipper and TIB importer agree that valuable wastes will be retained by the importer and form part of the consideration under the contract, would Headnote 1(a), Schedule 8, part 5C, TSUS, which prohibits importation for sale or sale on approval, or Headnote 2(b)(ii), Schedule 8, part 5C, TSUS, control?

Facts: Foreign steel ingots and plates are admitted under TIB for further processing under item 864.05, TSUS. The steel is processed into hot rolled steel coils in the United States with an estimated scrap factor of 6 to 16 percent in the rolling process. Steel scrap is currently free of duty. Duty would not be tendered, nor, it is stated, would a demand for liquidated damages be appropriate. It is suggested that an affidavit from the TIB importer or a duty-free consumption entry might be accepted as documentation of the amount of valuable waste not exported or destroyed in order to satisfy the bond obligation.

An associated problem arises from the fact that the rolling mill processes massive amounts of both imported and domestic steel. If valuable wastes resulting from the processing of foreign steel are combined with valuable wastes from the processing of domestic steel, the lack of physical or audit control creates a potentially serious accounting problem.

Finally, if prior to TIB entry the exporter and importer agree that retention of the valuable waste resulting from the processing forms a part of the consideration of the contract, a question arises over whether Headnote 2(b)(ii), Part 5, Schedule 8, TSUS, as amended takes precedence over Headnote 1(a) of the same part which prohibits importation for sale or sale on approval.

Law and analysis: Section 105 of Pub. L. 96-609 amended Headnote 2(b)(ii) of Part 5C, Schedule 8, TSUS, to read as follows:

(ii) all articles and valuable wastes resulting from such processing will be exported or destroyed under Customs supervision within the bond period; except that in lieu of the exportation or destruction of valuable wastes, duties may be tendered on such wastes at rates of duties in effect for such wastes at the time of importation.

The legislative history on section 106 of H.R. 5047 (redesignated section 105 in the final bill) is found in House Report 96-1109 and Senate Report 96-999. In each case, the legislative history discusses the factors leading to enactment of the amendment of section 2(b)(ii), that is, the uneconomic destruction or exportation of valuable waste generated in the processing prior to exportation.

The Customs Service has the responsibility for enforcing compliance with the law on temporary importations under bond. Customs officers must examine the merchandise on importation to set the amount of the bond and to identify the imported merchandise so that a comparison can be made when the merchandise leaves the United States. Once entered, the merchandise is released to the importer. For this reason, the lack of physical or audit control over the merchandise, the major check against unlawful diversion into the commerce of the United States is the examination of the merchandise when it is exported at the end of the temporary importation period pursuant to sections 10.38 and 10.39, Customs Regulations (19 CFR 10.38, 10.39), or the submission of acceptable documentary evidence of exportation, as prescribed in Headquarters memorandum CON-9-CO:R:CD:D, April 3, 1981, to all Principal Customs Field Officers.

Amended section 2(b)(ii) provides that, in lieu of exportation or destruction, valuable wastes generated in processing may be retained in the United States upon tendering of duties applicable to such wastes at the time of importation. Sections 10.39 and 113.55 of the Customs Regulations (19 CFR 10.39 and 113.35), are the regulations relating to cancellation of bonds taken pursuant to Schedule 8, Part 5C, TSUS. Current regulations do not provide for the tender of duty on wastes resulting from manufacture, and section 10.39 (d)(1), Customs Regulations (19 CFR 10.39 (d)(1)), provides in part that if any article entered under Schedule 8, Part 5C, TSUS, has not been exported or destroyed in accordance with the regulations within the bond period, the district director shall make demand in writing under the bond for the payment of liquidated damages equal to the entire amount of the bond.

With respect to the first two issues, the intent of Congress is to allow tender of duty and retention in the United States of valuable waste where exportation or destruction is uneconomic. Any evidence, satisfactory to the district director, that is sufficient to identify the valuable waste and show its description and quantity is adequate. Such evidence might be a statement of the importer, or other person having knowledge of the facts, setting forth the circumstances of the production of the valuable waste. We understand that importers of merchandise under the Automotive Parts Trade Agreement enter and deposit duties on merchandise diverted and not used in the manufacture in the United States of motor vehicles. No significant problems have been encountered with this procedure and it is suggested that a similar procedure may be suitable for documenting valuable waste, whether dutiable or not, for the purpose of cancelling the temporary importa-

tion bond. Such a consumption entry, or other suitable evidence, must be submitted within the TIB period or any authorized extension of that period.

The third issue relates to the identification of valuable waste resulting from the processing of articles admitted under item 864.05, TSUS, when such waste may be commingled with domestic waste. Headnote 2(b) (1), Schedule 8, Part 5C, TSUS, requires that:

if any processing of such merchandise results in an article . . . manufactured or produced in the United States—a complete accounting will be made to the Customs Service for all articles, wastes . . . resulting from such processing . . .

To our knowledge, there are no regulations or instructions prescribing the specific form of the accounting to be made to the Customs Service. There is enclosed for your information a letter ruling dated January 2, 1959 (DB 516.5), indicating in part that the records kept by the processor must be sufficient to maintain the identity of the imported merchandise while in the processor's care and must show the description and quantities of all products, by-products, and wastes resulting from processing and the disposition thereof. Evidence of this nature, satisfactory to the district director, would be acceptable. Where massive amounts of waste may be generated and commingled with domestic waste, it would appear advisable that the processor confer with the district director with regard to the records to be kept. If the commingled foreign and domestic valuable waste is fungible, for example, a first-in, first-out system, in connection with suitable production records, might be appropriate for reconciling the merchandise admitted temporarily under bond with the merchandise exported and the valuable waste retained in the United States. See also section 161.1a(a), Customs Regulations (19 CFR 161.1a(a)), relating to the definition of records.

The final issue concerns Headnote 1(a) to Part 5C, Schedule 8, TSUS. This Headnote provides in part that articles may be admitted temporarily free of duty under bond when not imported for sale or sale on approval. In a situation where the shipper and TIB importer agree before importation that the valuable wastes be retained by the importer and form part of the consideration under the contract, the question is raised whether amended Headnote 2(b)(ii) takes precedence over the prohibition against sale or sale on approval in Headnote 1(a).

The Customs Service has previously taken the position that where the TIB importer had no intention at the time the temporary importation bond was filed of exporting the scrap and had in fact negotiated a contract price on the basis of the processor retaining the scrap which

had a market value, sale of the waste violated the prohibition against sale or sale on approval and the bond was breached in its entirety.

In view of the fact that Congress, in amending Headnote 2(b) (ii), has explicitly provided for the tender of duties and retention of valuable waste in the United States, we believe that a case such as that presented must be interpreted as an exception to the general prohibition against sale or sale on approval in Headnote 1(a).

Holding: 1 and 2. Where valuable wastes resulting from the processing of articles admitted temporarily free of duty under bond under item 864.05, TSUS, are not exported or destroyed within the bonded period, and on which duties have not been tendered in accordance with Headnote 2(b)(ii), Part 5C, schedule 8, TSUS, since such wastes were free of duty at time of importation, the temporary importation bond may be cancelled upon production of any evidence satisfactory to the district director which establishes the identity, description, and quantity of the valuable waste retained in the United States. This procedure would be equally applicable to valuable wastes upon which duties are tendered at the rates in effect for such wastes at the time of importation. It is suggested that a consumption entry, dutiable or not dutiable, as appropriate, would be a suitable vehicle for documenting the cancellation of the bond liability. Cancellation of the bond liability assumes, of course, compliance with the regulations with respect to the articles processed and exported as well as identification of the valuable wastes retained in the United States.

3. If valuable wastes resulting from articles admitted under item 864.05, TSUS, are commingled with domestic valuable waste, Headnote 2(b)(1), Part 5C, Schedule 8, TSUS, requires in part that a complete accounting for all wastes be made to the Customs Service. The records of the processor must be sufficient to maintain the identity of the imported merchandise while in the processor's care and must show the description and quantities of waste resulting from processing and its disposition. Production records kept in the normal course of business, if satisfactory to the district director, may be sufficient to identify the imported merchandise and show the description, quantity, and disposition of valuable wastes resulting from processing. However, since processing may take many forms and result in various valuable wastes, it is not possible to specify the precise form of records to be kept. It would be advisable that the TIB importer discuss with the district director the proposed record-keeping procedure prior to importation of articles under item 864.05, TSUS, for processing.

4. The retention of valuable waste in the United States by the TIB importer when the value of the valuable waste formed part of the consideration under the contract prior to temporary admission under

bond under item 864.05, TSUS, is an exception to the prohibition against sale or sale on approval in Headnote 1(a), Part 5C, Schedule 8, TSUS. Any other result would be contrary to the clear intent of Congress in enacting the amendment to Headnote 2(b)(ii) to permit the retention in the United States of valuable wastes resulting from processing of articles under item 864.05, TSUS.

(C.S.D. 81-225)

Drawback: The Applicability of 19 U.S.C. 1313(j) to Light Trucks Imported Into Puerto Rico From the U.S. Virgin Islands and Thereafter Returned to Those Islands

Date: June 4, 1981
File: DRA-1-09-CO:R:CD:D
213073 DB

Issue: Are articles imported from the U.S. Virgin Islands and later shipped to these islands in the same condition as imported eligible for drawback under the same condition drawback law, 19 U.S.C. 1313(j)?

Facts: An automobile dealer in the U.S. Virgin Islands shipped some light trucks to Puerto Rico where they were entered duty-free. The dealer now has the opportunity to sell these trucks in the U.S. Virgin Islands at a financially practical price provided the duty paid upon entry into the Customs territory of the United States can be recovered. He asks whether upon return to the U.S. Virgin Islands the trucks will be eligible for same condition drawback.

Law and analysis: For purposes of this ruling, we assume the trucks were entered or withdrawn from warehouse for consumption in this country on or after December 28, 1980, the effective date of 19 U.S.C. 1313(j).

Both the courts and the Customs Service have defined exportation as a "severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to *some foreign country*" (Emphasis added). This definition was quoted with approval by the Supreme Court in *Swan and Finch Company v. United States*, 19 U.S. 143 (1903), and has been attributed to an opinion of the Solicitor General approved by the Attorney General in 1883, 17 Op. Atty. Gen. 579.

The U.S. Virgin Islands are an insular possession of the United States, and even though their officials administer their own tariff laws, they remain American territory and not a foreign country. For this reason, we and the courts have historically held that normally

shipments to the Virgin Islands are not considered exportation for purposes of goods manufactured in the United States under draw-back conditions (See Legal Determination 3470-16 of May 12, 1978).

However, these cases and rulings dealt with merchandise imported from foreign countries for manufacture in the United States for shipment to the Virgin Islands. In a ruling of December 31, 1962, disseminated as T.D. 55819(11), we stated that merchandise shipped from the Virgin Islands to the United States and entered under temporary importation bond could be returned to the Virgin Islands for purposes of canceling the liability under the bond. We further held that merchandise entered under bond from a foreign country could not be shipped to the Virgin Islands to avoid the bond's liability.

Following T.D. 55819(11) in T.D. 66-255(1) of October 21, 1966, we held that merchandise imported from the U.S. Virgin Islands and found not to conform to sample or specification was subject to drawback under 19 U.S.C. 1313(c) if returned to Customs custody for return to those islands. Our opinion was based on General Headnote 3(a), Tariff Schedules of the United States, which in relevant part provides:

(i) Articles imported from insular possessions of the United States which are outside the Customs territory of the United States are subject to the rates of duty set forth in column numbered one of the schedules, . . .

From the foregoing language, although insular possessions are American territory, they are considered as being outside the Customs territory and accordingly merchandise imported from them is treated as if imported from a foreign country. Therefore, if merchandise shipped to the United States from an insular possession is an importation, that same merchandise returned to that possession should constitute an exportation.

If merchandise imported from the Virgin Islands is considered exported when returned to those islands under 19 U.S.C. 1313(c), we can see no cogent reason to treat such merchandise differently under 19 U.S.C. 1313(j), the same condition drawback law.

Holding: Merchandise or articles imported duty-paid from the U.S. Virgin Islands are eligible for return of those duties under the same condition drawback law upon return to those islands, assuming compliance with the law and applicable regulations. Goods imported from foreign countries and shipped to insular possessions are not considered exported for purposes of the same condition drawback law.

(C.S.D. 81-226)

Classification: Sardines Packed in Tomato Sauce, Sherry Wine, and Oil

Date: June 16, 1981

File: CLA-2 CO:R:CV:G
068474 JH**To:** District Director of Customs, Milwaukee, Wisconsin 53202.
From: Director, Classification and Value Division.
Subject: Internal Advice 58/81-Classification of Sardines Packed in Tomato Sauce, Sherry Wine, and Oil.

Facts: Entry was submitted for 3,000 3.5-ounce tins of "Danish Bristling Sardines in Tomato and Sherry." A sample tin was described by a Customs laboratory report as consisting of sardines, not skinned, smoked, or boned, in sherry wine, tomato sauce and added safflower oil. The label on the tins indicated that they consisted of sardines, tomato sauce, sherry wine and olive oil. As a result, classification was changed from fish, prepared in any manner, not in oil, in item 112.20, Tariff Schedules of the United States (TSUS), dutiable at 4.7 percent ad valorem, to fish, prepared or preserved in any manner, in oil, in item 112.82, TSUS, dutiable at 15 percent ad valorem.

Issue: Whether the addition of oil to fish which has been prepared with tomato sauce and wine constitutes fish prepared or preserved in any manner in oil, in air tight containers.

Law and analysis: Headnote 3, Part 3, Schedule 1, TSUS, states that the term "in oil" means packed in oil or fat and/or oil and fat and other substances, whether such oil or fat was introduced at the time of packing or prior thereto. The provision in question is "fish prepared or preserved in any manner, in oil, in air tight containers." The term "prepared" has been considered many times by the Customs court and is generally considered to refer to edible substances which are not in the fresh or orginal condition but have been processed in some manner. Therefore, sardines which have been processed with tomato sauce and sherry wine are prepared within the meaning of that item description.

In *Strohmeyer Arpe Company v. United States*, 5 Court of Customs Appeals 527(1915), the tariff status of fish in tomato sauce which contained 5 percent oil was considered. The court commented that the classification as fish packed in oil was correct as the purpose of the statute was to provide for greater duty in the case of oil alone or oil with other substances used in the preparation of the fish in packing. There is no indication that the amount of oil would be a determinative. It is understood that it is common in the industry to describe a fish packed in a sauce, such as tomato sauce, as being packed in that

particular sauce alone and not mention the presence of oil, even though the oil may be added in the packing. Customs has been aware of this practice for many years and has considered such a product as containing added oil whether or not it was stated, and classified it under the provision for the particular fish prepared or preserved, in oil.

Holding: Sardines packed in tomato sauce, sherry wine, and added oil are classifiable under the provision for sardines prepared or preserved in any manner, in oil, in air tight containers, in item 112.82, TSUS.

(C.S.D. 81-227)

Subject: Classification: Laser Drag Scrapers and Trenchless Drainage Plows, if Actually Used in the Preparation of Farmland, Are Classifiable Under Item 870.40, TSUS

Date: June 18, 1981
File: CLA-2 CO:R:CV:G
068253 JLV

Re Decision on Request for Internal Advice No. 221/80.

DISTRICT DIRECTOR OF CUSTOMS,
Detroit, Michigan.

DEAR SIR: In your memorandum of October 29, 1980, you request the tariff classification of certain laser drag scrapers and trenchless drainage plows produced in Canada by (NAME). This request for advice was received at Headquarters on March 5, 1981.

Facts: The merchandise consists of laser drag scrapers and trenchless drainage plows with laser planes. The laser drag scrapers are designed to cut and fill land areas in order to level the land. The scrapers are available in sizes ranging from widths of 10 to 18 feet and corresponding capacities of 5 to 9 cubic yards. The scrapers can be pulled by farm tractors with either two wheel or four wheel drive. Each scraper connects to a tractor by means of a tow bar and is supported by 2, 4, or 6 trailing wheels.

The trenchless drainage plows are available in several models for different farm tractor power systems. These plows are designed to break the soil and to lay drainage pipe or tile at various depths in a single operation.

Both machines are said to be used by farmers in preparing land for farming operations in addition to being used by drainage contractors and other general contractors.

Issue: Are the machines classifiable in item 870.40, Tariff Schedules of the United States (TSUS), or in item 870.45, TSUS?

Law and analysis: The importer does not claim that the scrapers and trenchless drainage plows are classifiable as agriculture implements in item 666.00, TSUS. Neither is there any evidence of chief use by farmers in the agricultural pursuit of preparing soil for farming purposes.

The scrapers and trenchless drainage plows appear to be of a type classifiable under the provision for other excavating, leveling, boring, and extracting machinery in item 664.08, TSUS. At issue, however, is whether they are classifiable under the provision for machinery, equipment, and implements to be used for agricultural or horticultural purposes in item 870.40, TSUS, or under the provision for certain parts of articles provided for in item 666.00, TSUS, in item 870.45, TSUS.

Item 870.45, TSUS, applies only to parts of articles provided for in item 666.00, TSUS. The machines at issue are complete machines, not parts, and are therefore precluded from classification in item 870.45.

Item 870.40, TSUS, is an actual use provision. The legislative history for that item states that it will permit the duty-free entry of articles described in item 666.00 which are not classifiable thereunder because their chief use is not in agriculture or horticulture.

Therefore, assuming that the use of these machines by a farmer in preparing farmland is an agricultural pursuit, the scrapers or trenchless drainage plows would be eligible for tariff treatment under item 870.40, TSUS, upon compliance with the requirements set forth in Customs Regulations 10.131 to 10.139 (19 CFR 10.131-10.139). There is a question, however, that such soil preparation is not an agricultural pursuit. If not, then the machines in question would not be of the class or kind of machine contemplated in item 666.00, TSUS, and would accordingly not be classifiable under that provision or under item 870.40, TSUS. In Headquarters letter of November 21, 1978, the laying of drainage tile by a trenching machine was characterized as a plumber's pursuit, not a farmer's pursuit. In view of that, it was held that a trencher would not be classifiable in item 666.00, even if chiefly used on agricultural lands. Similarly, judicial opinion in *Arthur J. Humphreys v. United States*, 66 Cust. Ct. 24, 28, C.D. 4163 (1971) indicated that under the principle of *noscitur a sociis* the use of a clearing blade was not encompassed by the provision for machinery for soil preparation. See also I/A 71-75 (Headquarters Letter of May 23, 1975, file 040129).

Notwithstanding the above statements, the use of either a scraper or a trencher by a farmer in making farmland more suitable for raising crops or other farming purposes appears to be soil preparation within the scope of agricultural pursuits. It is sufficiently related to

the production of food or raiment for man. By improving drainage a farmer is able to plow or plant earlier or make certain untilable land suitable for farming. By leveling land and filling holes a farmer is able to make farmland easier to work and more adaptable to farm machinery. Therefore, it is our opinion that a scraper and trench less drainage plow should be considered of a class or kind of machinery within item 666.00, TSUS. Absent a showing of chief use in agricultural pursuits, they would still be eligible for classification under item 870.40, TSUS, upon submission of satisfactory evidence that they are actually used by a farmer in the preparation of farmland for agricultural purposes.

One final question is raised concerning part-time use of such machinery for purposes other than working farmland. If a farmer were also a land contractor and the machinery were to be used for both his agricultural needs and his contract land business, the machinery would not be actually used in agricultural pursuits for tariff purposes. On the other hand, incidental use by a farmer for purposes other than the primary use in farming operations would not normally bar 870.40 treatment. Each case, however, should be examined by the district director having jurisdiction over the merchandise in question.

Holding: The scrapers and trenchless drainge plows are classifiable under items 870.40, TSUS, if they are actually used by a farmer in preparing farmland and if the actual use requirements of sections 10.131-10.139 of the Customs Regulations are satisfied.

This ruling does not hold that such machinery is chiefly used by farmers nor does it apply to such machinery that is imported and used by land developers or contractors who also perform these services for farmers.

(C.S.D. 81-228)

Classification: Certain Technical Publications Imported With Jet Aircraft

Date: June 25, 1981
File: CLA-2 CO:R:CV:G
065475 BB

AREA DIRECTOR OF CUSTOMS,
Newark Area, Airport International Plaza, Newark, New Jersey.

DEAR SIR: This is in response to Request for Internal Advice No. 174/80 submitted on behalf of (company name) which concerns the classification of certain technical publications imported with jet aircraft (CLA-1-01N:C:D:LD).

The subject technical publications include the following: two sets

of operating manuals, two sets of maintenance manuals, two sets of wiring diagrams, two sets of tool and equipment lists, one illustrated repair manual, one structural repair manual, one set of overhaul manuals, two sets of flight manuals, two sets of service bulletins, two sets of guide books, one set of news flashes, and one set of service news letters.

These technical publications are carried aboard a new (co.) jet aircraft when that aircraft is imported into the United States. The publications are separately invoiced, and have an invoiced value of approximately \$3,300. After importation these technical publications are removed from the aircraft. They provide the purchaser with detailed, updated information on the proper operation and maintenance of a (co.) jet aircraft, as well as information on how to order replacement parts.

The issue presented is the proper treatment of these technical publications under the Tariff Schedules of the United States (TSUS).

Customs has issued several rulings indicating that what is generally referred to as "use and care" information, which is packaged along with the merchandise it describes, is not subject to separate appraisement, but rather, its value is added to that of the merchandise. These rulings have almost invariably involved single page printed instruction and assembly sheets or small brochures, of virtually insignificant value.

The rationale for this treatment of use and care information was that these sheets and brochures were properly considered "packing," the value of which was incidental to the entire enclosure. *See*, for example, CIE 31/62. Under either section 402 or 402a of the Tariff Act of 1930, as amended, the dutiable value of merchandise includes the cost of all containers and coverings of whatever nature, and all other costs, charges and expenses incident to placing the merchandise in condition, packed, ready for shipment to the United States. The assembly sheets and brochures were believed to fall under the "all other costs, charges and expenses" language of this valuation statute.

After the adoption of the Tariff Schedules of the United States, several Customs rulings stated that these instruction sheets were not separately classifiable because they were considered packing "within the purview of General Headnote 6(b)(i), TSUS." *See*, for example, Headquarters Ruling Letter (HRL) 051304, dated May 2, 1977.

General Headnote 6(b)(i) states that usual or ordinary types of shipping or transportation containers or holders, if not designed for, or capable of, reuse, and containers of usual types ordinarily sold at retail with their contents, are not subject to treatment as imported articles but, in effect, are dutiable at the same rate as their contents.

This Headnote contemplates coverage of items that are non-reusable

and which will be discarded when the merchandise is unpacked. While single page assembly instructions or small informational brochures might fall within the intended scope of the Headnote's language, the voluminous manuals which are the subject of this case obviously, are intended to be retained after the merchandise is unpacked, and will be reused on a regular basis. Such articles do not fall within the purview of General Headnote 6(b)(i).

In HRL 051190 dated July 17, 1978, (legal determination 79-0056), Customs was asked to classify several volumes of technical information imported with flight simulators. It was recognized that neither the "packing costs" under section 402a, nor the "within the purview of Headnote 6(b)(i)" rationales for the classification of use and care information were applicable to merchandise with a significant value and which obviously was intended to be reused.

Customs decided to base the classification of this merchandise on a theory of "entireties." HRL 051190 held that if the technical manuals were imported with a flight simulator, if they were geared to be used with the flight simulator, if they were necessary for the proper operation of the flight simulator, and if they had no commercial value apart from the simulator, then the manuals constituted an entirety for tariff purposes and were dutiable under the same provision as the simulator.

The doctrine of entireties is based in part on commercial realities associated with imported merchandise and in part on administrative convenience. In general, the doctrine states that an imported article will be regarded as an entirety when the components, on being joined, form a new article which has a character or use different from that of any of the parts, or when one of the components or elements is predominant, the other parts being merely incidental to the predominant part *E. M. Stevens Corp. v. United States*, 44 Cust. Ct. 203, Abstract 66971 (1962). However, when the article is imported as a unit, but the components retain their individual identities and are not subordinated to the identity of the combination, duty will be imposed on the components as if they had been imported separately. *Donalds Ltd., Inc. v. United States*, 32 Cust. Ct. 310, C.D. 1619 (1954).

There are no universal, iron clad rules for applying this doctrine. The courts have pointed to various criteria for determining the existence of an entirety such as physical joinder, functional interplay, merchandising, design, intent, or commercial unit. The problem is that opposite conclusions about the existence of an entirety can be reached, depending upon which of these criteria are considered "controlling" in a particular situation. *Ikora, Inc. v. United States*, C.D. 4202 (1971).

In HRL 051190, the fact that the technical manuals were necessary for the operation of the flight simulators was considered controlling.

This led to the conclusion that the flight simulators and manuals were an entirety. We do not believe this conclusion is justified in the subject situation for the following reasons:

First, technical manuals are never physically joined with the merchandise they describe. In fact, these technical manuals are removed from the aircraft after arrival.

Secondly, the presence of a technical manual on how to operate and maintain a piece of equipment does not create a new article of commerce having a name, character or use different from that of the piece of equipment and the manual standing alone.

Third, although technical manuals are not as valuable as the equipment they describe, they are neither incidental to that equipment nor do they merge with that equipment. This is especially true in the subject case. These manuals provide information about the aircraft, but they are still manuals and the aircraft is still an aircraft. The manuals are separately invoiced and they have a substantial value in themselves.

Fourth, there is no evidence that these technical manuals cannot be sold separately, for example in a secondary market for (co.) aircraft. Shop manuals for particular types of automobiles are sold separately and classified as books. See TC 484.2, dated December 8, 1967. Therefore, the manuals and the aircraft do not invariably form a commercial unit.

Fifth, the doctrine of entireties can never be used to circumvent the intent of Congress. *Miniature Fashions, Inc. v. United States*, 54 CCPA 11, 16, C.A.D. 894 (1966). Congress has clearly created separate provisions in the tariff schedules for aircraft and for books. The United States is bound by Article I of the Agreement on the Importation of Educational, Scientific and Cultural Material (Florence Agreement) to provide duty-free entry for this type of printed material. Congress has implemented the provisions of this Agreement in the tariff schedules. See Pub. L. 89-651, 80 stat. 897, and 1966 USCCAN 3254 *et seq.* for the legislative history behind the adoption of the duty-free provisions for this type of printed matter.

Sixth, a rationale of administrative convenience in combining two entities is not persuasive in this case where both entities have substantial value and where the importer has isolated respective costs and separately invoiced the items.

Accordingly, we conclude that the doctrine of entireties is not applicable to technical manuals.

As we have seen, none of the previous rationales for classifying use and care information along with the merchandise it describes is applicable to these technical manuals. We conclude, therefore, that these manuals should be separately classified.

As to whether an "established and uniform practice" exists to classify use and care information along with the merchandise it

describes, 19 U.S.C. 1315(d) provides that an administrative ruling resulting in the imposition of a higher rate of duty than the Secretary shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective 30 days after the publication of such ruling in the Federal Register. However, publication is only required where the Secretary has made a "finding" that such a practice of classification exists. *Ditbro Pearl Company, Inc. v. United States*, 515 F. 2d 1157 (1975). Part 177.10(b), Customs Regulations, (19 CFR 177.10(b)), provides that a ruling regarding a rate of duty or charge which is published in the Customs Bulletin will establish a uniform practice, i.e., publication will constitute a "finding" of such a practice by the Secretary of the Treasury.

None of the rulings concerning classification of use and care information were rulings "regarding a rate of duty or charge." Instead, they were rulings applying legal doctrines to particular factual situations. Each of these use and care rulings dealt with different types of merchandise and resulted in the application of different rates of duty. The concept of an "established and uniform practice" is only useful when describing a particular rate of duty applied consistently to a particular type of merchandise. Therefore, the concept of an established practice has no relevance to the type of question presented in this case. Accordingly, Customs is not bound by any practice of considering use and care information to be an entirety with the merchandise it describes.

We have already found that these technical manuals do not form an entirety with the aircraft they describe and that they should be classified separately. All unliquidated entries for these aircraft manuals should be liquidated in accordance with this ruling. Because the rationale expressed therein no longer reflects the current views of the Customs Service, pursuant to section 177.9, Customs Regulations (19 CFR 177.9), HRL 051190 is hereby revoked.

(C.S.D. 81-229)

Subject: Vessels: Application of Vessel Repair Regulations and Entry Requirements Prescribed in Section 4.7 and 4.14, Customs Regulations as Amended by T.D. 80-237

Date: July 14, 1981
File: VES-13-02-CO:R:CD:C
105193 PH

To: Regional Commissioner, New Orleans, Louisiana.

From: Chief, Carrier Rulings Branch.

Subject: Vessel Repair Entry Requirements (19 CFR 4.14).

With your memorandum of June 3, 1981 (VES-13-18-V:O:CV:L
ML), you forwarded a letter dated May 11, 1981, from (Company

Name) requesting a waiver from the requirement in section 4.14, Customs Regulations, for an "*immediate* full declaration" and a certification that all past declarations have been made.

The requirements to which (Company Name) refers are provided for in sections 4.7 and 4.14, Customs Regulations, which were amended by T.D. 80-237, published in the Federal Register September 30, 1980 (45 FR 64560). As amended, section 4.7(d)(1) requires the master or owner of a vessel subject to vessel repair duties at the port of first arrival from a foreign country to declare on Customs Form 226 any equipment, repair parts, or materials purchased for the vessel, or any expense for repairs incurred outside the United States, within the purview of 19 U.S.C. 1466. The same requirement is contained in section 4.14(b)(1), Customs Regulations. Section 4.14(b)(2), Customs Regulations, provides that an entry for all equipment, parts, or materials purchased for, and all repairs made outside the United States to, any vessel subject to the provisions of section 4.14, Customs Regulations, shall be filed with the appropriate Customs officer at the port of first arrival within 5 working days after arrival. The party filing the entry is required to mark it to indicate whether it is a full and complete account or an incomplete account. If the former, the entry papers must include evidence showing the cost of each item listed on the entry (section 4.14(b)(2)(ii), Customs Regulations). If the repair entry is submitted as an incomplete account, the evidence must be submitted within 60 days from the date of the vessel's arrival (section 4.14(b)(2)(ii), Customs Regulations). Provision is made in section 4.14(b)(2)(ii) for a 30 day extension of this time limit which may be allowed by the field vessel repair liquidation unit and a further extension which may be allowed by the Carrier Rulings Branch Headquarters.

The letter from (Co. Name) also concerns the requirement in section 4.14(d)(1)(i), Customs Regulations, that an application for relief certify that all foreign equipment, parts, or materials purchased for, and all foreign repairs made to, the vessel within one year immediately preceding the application have been declared as required by section 4.14, Customs Regulations.

These requirements, one of which was contained in the Regulations before the amendment of the vessel repair regulations effected by T.D. 80-237 (that vessel repairs, etc., be declared at the port of first arrival), were fully considered in the process of amending the vessel repair Regulations. The comments received on the two requirements added to the Regulations by T.D. 80-237 (the time limit for submitting cost evidence and the certification required in an application for relief) were discussed in T.D. 80-237, and it was determined to include them in the vessel repair Regulations as they now read (45 FR 64562, 64563-64564). As originally proposed (43 FR 14060, April 4,

1978), certification would have been required as to all foreign repairs made to the vessel on *prior voyages*. T.D. 80-237 changed the certification requirement to apply only to all equipment or parts or materials and repairs made *within one year preceding the application*, in conformity with the statutory language (19 U.S.C. 1466(d)).

We believe that part of the problem is confusion caused by combining the former declaration form (Customs Form 3415) and the former vessel repair entry form (Customs Form 7535) into one form (Customs Form 226) by Treasury Decision 79-86. While the former two forms have been combined, the differences between a declaration and a vessel repair entry remain. When Customs Form 226 is presented as a declaration under section 4.7(d)(1), Customs Regulations, it is considered part of the inward foreign manifest. The Declaration box on Customs Form 226 should be checked and only items 1 through 16 need be completed (except for costs, which can be reasonably estimated on the declaration, those items cover information the master would normally be aware of when the manifest is presented (see section 4.7(d)(3), Customs Regulations)). When Customs Form 226 is filed as a vessel repair entry under section 4.14(b)(2), Customs Regulations, it is considered a document somewhat similar to a consumption entry. The Entry box on Customs Form 226 should be checked and all items except items 16, 17, and 18 should be completed. When Customs Form 226 is filed as an entry, it can be filed as a complete or as an incomplete entry and this should be indicated in item 25 (section 4.14(b)(2), Customs Regulations). As stated above, when Customs Form 226 is filed as an incomplete entry, the required evidence must be submitted within 60 days, which on proper request can be extended 30 days by the field or further by Headquarters (see section 4.14(b)(2)(ii), Customs Regulations).

The letter from (Co. Name) also states that pro forma invoices "which are apparently to contain the same unavailable information that is required on form 226" have been required with vessel repair entries. Obviously some evidence of the cost of items listed on a vessel repair entry must be submitted when Customs Form 226 is submitted as a complete entry (see section 4.14(b)(2)(ii), Customs Regulations). Since we know that it is difficult at times for vessel owners or their representatives to present commercial invoices, we have permitted the submission of pro forma invoices to assist vessel owners. Pro forma invoices are provided for in Manual Supplement 3730-01, January 22, 1981, and are only required when commercial invoices covering all repairs and/or equipment are unavailable (so that the entry would not be a full and complete account (section 4.14(b)(2)(ii)). As stated in Manual Supplement 3730-01, a pro forma invoice is acceptable if it contains a reasonable estimate of the cost of repairs and/or equipment.

It is hoped that the above explanation will clear up the confusion (Co. Name) states that they have experienced with 4.14, Customs Regulations. Please inform (Co. Name) that we would appreciate their views and comments on this clarification. Further, we would appreciate any comments you care to offer on this matter.

(C.S.D. 81-230)

Vessel Repairs: Dutiability of Travel Charges, Gas Free Certification, and Alterations

Date: July 16, 1981

File: VES-13-18-CO:R:CD:C
105207 JM

REGIONAL COMMISSIONER OF CUSTOMS,
Los Angeles, California.

DEAR SIR: A letter dated June 15, 1981, from the Regional Director, Classification and Value Division, requested a ruling on a petition for relief from duty under 19 U.S.C. 1466 on the cost of repairs to the SS NEW YORK, vessel repair entry No. 354657, dated May 1, 1980.

We have reviewed the entire file on this matter and agree with your proposed liquidation with the exception of items as listed in comments below:

Comment 1. In your proposed liquidation, the charges for the service engineer's travel and waiting time shown on Document #2, page 2 and Document #23, page 103 are shown to be dutiable. This proposed action is in agreement with Headquarters ruling 104940 dated December 4, 1980, which was published as C.S.D. 81-137 and held that labor charges for the time workmen were awaiting arrival of a vessel are considered a part of the cost of repairs, citing CIE 601/67 concerning portal to portal pay of workmen. However, the U.S. Court of International Trade has held that compensation for "travel time" is not dutiable under 19 U.S.C. 1466. *Mount Washington Tanker Company A Subsidiary of Victory Carriers, Inc., v. United States*, 1 CIT —Slip Op. 80-8 (Dec. 5, 1980). In reaching its conclusion in the Mt. Washington case, the Court stated "It is clear that the travel compensation paid the workers, although an expense incident to the repairs, was not repairs." Under the circumstances, the charges for the service engineer's travel and waiting time should be liquidated as not dutiable.

We note that Document #15, page #88, and Document #27 page 112 contain charges for "Travelling time" which are correctly shown free of duty on the proposed liquidation.

Comment 2. In the proposed liquidation, the charges for a gas free certification as shown on Document #10, items #1 and #1980, totalling 35,300 DM, are shown to be dutiable. In CIE 1188/60 we

held that the charges for a gas free certification should be apportioned between repair "costs which are to be remitted and those for which relief is not warranted and duty assessed on that portion of the charge applicable to items which are not being remitted." Since the gas free certification is the subject case was required to complete dutiable repairs and non-dutiable permanent modifications, only that portion of the charge for the gas free certification applicable to dutiable items is dutiable.

Comment 3. The charge for installation of tachometers on each of the four main cargo pumps (Document #10, item #54) is considered on the proposed liquidation to be dutiable as a purchase of equipment. The record indicates that these tachometers were additions to the pumps rather than replacement items. In a ruling in case number 104937, dated April 9, 1981, copy enclosed, we held "The alteration or modification to the cooling system of a vessel in order to convert it from salt water to fresh water operation, when no restoration of the system to previous working condition from a state of decay, destruction, or injury is involved, is not dutiable as a 'repair' under 19 U.S.C. 1466." Since the installation of the tachometers constitute an alteration or modification of the main cargo pumps, this charge is not dutiable.

Comment 4. While we agree that Document #10, and Item #110 covering permanent installation of a platform with handrails and a ladder is a permanent modification and not dutiable, the amount of 6,796 DM claimed not dutiable is incorrect. The claimed amount includes 4,696 DM charged for dutiable repairs to the Inert Gas main deck swing value (Item 110). The correct amount attributable to the modification is 2,100 DM.

Comment 5. We agree with the statement in the letter dated December 30, 1980, from the Chief, Liquidation Branch, to the petitioner that charges in the amount of R 198.00 for "telex and overseas telephone calls" appearing as Item 102, Document 19 are not dutiable under 19 U.S.C. 1466. However, in telephone conversations of July 8 and 9, 1981, between Mr. James Phillips of your office and Mr. John Mathis of my staff, Mr. Phillips requested a citation to a ruling supporting this position. These expenses are similar to travel compensation paid workers in that the cost of the telex and telephone messages "although an expense incident to the repairs, was not an expense directly involved in the making of the repairs." Accordingly, the Mt. Washington case mentioned above may be cited as authority for holding the communication charges to be not dutiable.

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 101

Proposed Change in the Field Organization of the Customs Service

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This notice proposes to amend the Customs Regulations to change the field organization of the Customs Service by establishing, on a 2-year experimental basis, a new Customs port of entry at Springfield, Missouri, in the St. Louis, Missouri, Customs district. The proposed change is being made as part of Customs continuing program to obtain more efficient use of its resources and to provide better service to carriers, importers, and the public.

DATE: Comments must be received on or before (30 days from the date of publication in the Federal Register).

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Springfield, Missouri, is a community of 165,000 in the southern section of the state. Even though it is served by rail, air, and highway transportation, all imported merchandise destined for Springfield must be entered through distant ports of entry in St. Louis and Kansas City, Missouri, and Peoria, Illinois. The nearest of these, Peoria, is 170 miles away.

On May 7, 1980, the Springfield Chamber of Commerce submitted an application to Customs requesting the establishment of a Customs

port of entry in that city. Although data submitted in support of the Chamber's request indicated that Customs-related activity in the area exceeded Customs minimum requirements for establishing ports of entry, it did not include sufficient documentation to permit a fair evaluation of community and business support for the proposal. Accordingly, Customs was reluctant to commit resources to the project until the need for, and potential use of, the port could be shown.

Additional data subsequently forwarded to Customs indicates that strong business support does exist for the establishment of the port of entry and that parties in Springfield are considering the possibility of establishing a foreign trade zone there. In addition, a major national corporation has stated that it is considering radically increasing the production capacity of its Springfield plant.

On the basis of this information, Customs believes that there is potential use for a port of entry at Springfield and proposes to establish a port of entry there on a 2-year experimental basis. To verify that the projected workload does materialize, Customs will evaluate the activity at Springfield at the end of the 2-year period before making a final determination about the establishment of a permanent port of entry at this location.

The geographical limits of the Springfield, Missouri, Customs port of entry would encompass all of the territory within Greene and Christian Counties, Missouri.

AMENDMENT TO THE REGULATIONS

If the proposed change is adopted, the list of Customs regions, districts, and ports of entry in section 101.3, Customs Regulations (19 CFR 101.3), will be amended accordingly.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

EXECUTIVE ORDER 12291

Because this proposal will not result in a "major" rule as defined in section 1(b) of E.O. 12291, the regulatory impact analysis and review prescribed by section 3 of the E.O. is not required.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of sections 605(b) of Title 5, United States Code (as added by section 3 of Pub L. 96-354, the "Regulatory Flexibility Act"), the Secretary of the Treasury has determined that, if promulgated, this proposal it is not likely to have a significant economic impact upon a substantial number of small entities. Accordingly, this proposal is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this proposal may have a limited effect upon some small entities in the Springfield area, it is not expected to be significant because the establishment of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act.

AUTHORITY

This change is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5 (46 FR 9336).

DRAFTING INFORMATION

The principal author of this document was Lawrence P. Dunham, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

Dated: October 2, 1981.

[Published in the Federal Register Oct. 29, 1981 (46 FR 53448)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

EDWARD D. RE

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis

James L. Watson
Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge

SAMUEL M. ROSENSTEIN

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 81-91)

R. E. ABBOTT, ET AL., PLAINTIFFS *v.* UNITED STATES SECRETARY OF
LABOR, DEFENDANT

Before Re, *Chief Judge*.

Court No. 81-00028

Order

(Dated October 13, 1981)

Upon motion by plaintiffs for an order, pursuant to Rule 56.1,

directing that the above-entitled action be submitted for determination by a motion for review of the administrative determination upon the agency's record, defendant's response thereto, upon all papers and proceedings had herein, and upon due deliberation, it is hereby

ORDERED that plaintiffs' motion be granted; and that this action shall be submitted for determination as prescribed by Rule 56.1; and it is further

ORDERED that the motion papers and briefs submitted by the parties shall address the following issues:

(1) Whether the Secretary of Labor's determination denying plaintiffs' certification of eligibility for trade adjustment assistance pursuant to Section 223 of the Trade Act of 1974, 19 U.S.C. § 2273, violated plaintiffs' Constitutional guaranty of equal protection under the law in that the Secretary's determination resulted in dissimilar treatment of similarly situated workers without a rational or reasonable basis therefor; and

(2) Whether the Secretary of Labor's findings and resulting determination denying plaintiffs' certification of eligibility for trade adjustment assistance pursuant to Section 223 of the Trade Act of 1974, 19 U.S.C. § 2273, are supported by substantial evidence as contained in the administrative record certified and filed with this court;

and it is further

ORDERED that plaintiffs serve and file their motion papers and brief no later than November 3, 1981; and it is further

ORDERED that defendant serve and file his response to plaintiffs' motion papers and brief no later than December 3, 1981; and it is further

ORDERED that plaintiffs serve and file their reply to defendant's response no later than December 17, 1981.

(Slip Op. 81-93)

ZENITH RADIO CORPORATION, ET AL., PLAINTIFFS v. UNITED STATES,
DEFENDANT

Before LANDIS, Judge.

Consolidated Court No. 81-6-00734

Motions To Intervene Granted

(Dated October 15, 1981)

LANDIS, Judge: In this action pursuant to section 516A(a)(2) of the Tariff Act of 1930, as amended (19 U.S.C. § 1516a (a)(2)), the

following applicants move for leave to intervene pursuant to Rule 24(a):

Sanyo Electric Inc.; Hitachi, Ltd.; Hitachi Sales Corporation of America; Hitachi Sales Corporation of Hawaii; Mitsubishi Electric Corporation of Tokyo, Japan; Mitsubishi Electric Sales America, Inc. of Compton, California; Nippon Electric Co., Ltd. of Tokyo, Japan; NEC America, Inc. of Elk Grove, Illinois; Toshiba Corporation; Toshiba America, Inc.; Toshiba Hawaii, Inc.; Matsushita Electric Industrial Co., Ltd., Panasonic Company and Quasar Company (divisions of Matsushita Electric Corporation of America); Panasonic Hawaii, Inc.; Panasonic Sales Company (a division of Matsushita Electric of Puerto Rico, Inc.); Victor Company of Japan, Limited; and U.S. JVC Corp.

These various motions to intervene are consolidated herein for purposes of this decision. All proposed intervenors have served an answer to the *Zenith* complaint accompanying their motion to intervene.

A related action brought by the Committee to Preserve American Color Television (Compact) and Imports Committee, Tube Division, Electronic Industries Association (Electronic) was consolidated with this action by court order dated August 24, 1981.

Plaintiffs Compact and Electronic oppose the intervention motions on the grounds that the moving intervenors have not accompanied their intervention motions with a proposed pleading, namely, an answer to the Compact/Electronic complaint, as required by Rule 24(c).¹

In view of the fact that this action has been consolidated and all proposed applicants have answered one complaint (*Zenith*), and the further fact that Congress intended that this type of dumping review proceeding be handled expeditiously and with preference over other matters, 28 U.S.C. § 2647(4), it would be an inappropriate exercise of judicial discretion to deny these motions on such technical grounds which could be appropriately cured by renoticing the instant motions with the proper papers in support thereof. Such disposition would be both a waste of judicial time and economy and cause unnecessary expense to all parties involved.

Accordingly, the motions to intervene are granted *on condition that* the moving applicants serve an answer or otherwise move with respect to the Compact/Electronic complaint within twenty (20) days of entry of this order.

¹ Plaintiffs Compact and Electronic do not contest the proposed intervenors substantive right to intervene. All applicants herein have an absolute right to intervene as they are interested parties as defined by section 771(9)(A) of the Tariff Act of 1930, as amended [19 U.S.C. § 1677(9)(A)], and have standing as a matter of unconditional right pursuant to 28 U.S.C. § 2331(j)(1)(B) having participated in the administrative proceedings resulting in determinations under review before the court.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, October 19, 1981.

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD Par. or Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	35%			
P81/161	Re, C.J. October 13, 1981	Intertec, Inc.	76-4-01014	Item 688.70	Item 688.40 5.6%	Sanyo Electric Inc. v. U.S. (C.D. 4885, aff'd C.A.D. 12/88)	San Francisco Power failure lights	

P81/162	Rao, J. October 13, 1981	C.J. Tower & Sons of Buffalo, Inc.	Item 682.60 7, 5%	Items 807.00/882.60 7.5% on ap- praised value of imported merchandise less value of products of U.S., dutiable values are \$10,490 (en- try No. 315133), \$9,579 (entry No. 208850), and \$39,171 (entry No. 254371)	Agreed statement of facts Buffalo American goods returned; articles ("stators") as- sembled abroad in part of fabricated stator frames which are products of U.S.
P81/163	Rao, J. October 14, 1981	C. J. Tower & Sons of Buffalo, Inc.	Item 682.60 7, 5%	Items 807.00/882.60 7.5% on ap- praised value of imported merchandise less value of products of U.S., duti- able values are \$41,023 (entry No. 201842) and \$14,923 (en- try No. 249845)	Agreed statement of facts Buffalo American good returned; articles ("stators") as- sembled abroad in part of fabricated stator frames which are prod- ucts of U.S.

60 DECISIONS OF U.S. COURT OF INTERNATIONAL TRADE

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS		PORT OF ENTRY AND MERCHANDISE
						Par. or Item No. and Rate	Par. or Item No. and Rate	
P81/164	Newman, J. October 14, 1981	Stone and Downer	79-10-01531	Item 608.52 10.5%, plus additional duties under items 607.01 and 607.02 on chromium and mo- lybdenum content	Item 609.82 2% + 0.1¢ per lb., plus additional duties, <i>sapra</i>	Overton & Co. v. U.S. (C.D. 4875)	Boston Hot rolled, sectional steel shapes, alloyed; not an- nealed, drilled, punched, nor otherwise advanced	
P81/165	Newman, J. October 14, 1981	Stone and Downer	79-10-01533	Item 608.52 10.5%, plus additional duties under items 607.01 and 607.02 on chromium and mo- lybdenum content	Item 609.82 2% + 0.1¢ per lb., plus additional duties, <i>sapra</i>	Overton & Co. v. U.S. (C.D. 4875)	Boston Hot rolled, sectional steel shapes, alloyed; not an- nealed, drilled, punched, nor otherwise advanced	
P81/166	Newman, J. October 14, 1981	Stone and Downer	79-10-01536	Item 608.52 10.5%, plus additional duties under items 607.01 and 607.02 on chromium and moly- bdenum con- tent	Item 609.82 2% + 0.1¢ per lb., plus additional duties, <i>sapra</i>	Overton & Co. v. U.S. (C.D. 4875)	Boston Hot rolled, sectional steel shapes, alloyed; not an- nealed, drilled, punched, nor otherwise advanced	

P81/167	Newman, J. October 14, 1981	Stone and Downer 80-1-00137	Item 608.52 10.5% plus additional duties under items 607.01 and 607.02 on chromium and molyb- denum con- tent	Item 609.82 2% + 0.1¢ per lb., plus addi- tional duties, <i>sapra</i>	Overtown & Co. v. U.S. (C.D. 4875)	Boston Hot rolled, sectional steel shapes, alloyed; not an- nealed, drilled, punched, nor otherwise advanced
P81/168	Newman, J. October 14, 1981	Stone and Downer 80-1-00140	Item 608.52 10.5% plus additional duties under items 607.01 and 607.02 on chromium and molyb- denum con- tent	Item 609.82 2% + 0.1¢ per lb., plus additional duties, <i>sapra</i>	Overtown & Co. v. U.S. (C.D. 4875)	Boston Hot rolled, sectional steel shapes, alloyed; not an- nealed, drilled, punched, nor otherwise advanced
P81/169	Newman, J. October 14, 1981	Wetherell Brothers, Inc. 79-10-01537	Item 608.52 10.5% plus additional duties under items 607.01 and 607.02 on chromium and molyb- denum con- tent	Item 609.82 2% + 0.1¢ per lb., plus additional duties, <i>sapra</i>	Overtown & Co. v. U.S. (C.D. 4875)	Boston Hot rolled, sectional steel shapes, alloyed; not an- nealed, drilled, punched, nor otherwise advanced

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Par. or Item No. and Rate	HELD Par. or Item No. and Rate	BASIS		PORT OF ENTRY AND MERCHANDISE
PSI/170	Newman, J. October 14, 1981	Wetherell Brothers, Inc.	80-2-00876	Item 606.52 10.5% plus additional duties under items 607.01 and 607.02 on chromium and molyb- denum content	Item 608.52 2% + 0.14 per lb., plus additional duties, <i>supra</i>	Overtown & Co. v. U.S. (C.D. 4875)	Boston Hot rolled, sectional steel shapes, alloyed; annealed, drilled, punched, nor otherwise advanced	
PSI/171	Newman, J. October 14, 1981	Wetherell Brothers, Inc.	80-2-00378	Item 608.52 10.5% plus additional duties under items 607.01 and 607.02 on chromium and molyb- denum content	Item 609.52 20.16% + per lb., plus additional duties, <i>supra</i>	Overtown & Co. v. U.S. (C.D. 4875)	Boston Hot rolled, sectional steel shapes, alloyed; annealed, drilled, punched, nor otherwise advanced	
PSI/172	Newman, J. October 15, 1981	Stone and Downer	79-10-01530	Item 608.52 10.5% plus additional duties under items 607.01 and 607.02 on chromium and molyb- denum content	Item 609.52 2% + 0.14 per lb., plus additional duties, <i>supra</i>	Overtown & Co. v. U.S. (C.D. 4875)	Boston Hot rolled, sectional steel shapes, alloyed; annealed, drilled, punched, nor otherwise advanced	

P81/173	Newman, J. October 15, 1981	Wetherell Brothers, Inc. 80-6-00962	Item 608.52 10.5% plus additional duties under items 607.01 and 607.02 on chromium and molybdenum content	Item 609.82 2% + 0.1¢ per lb., plus additional duties, <i>supra</i>	Overton & Co. v. U.S. (C. D. 4875)	Boston Hot rolled, sectional steel shapes, alloyed; not an- nealed, drilled, punched, or otherwise advanced
P81/174	Newman, J. October 15, 1981	Wetherell Brothers, Inc. 80-12-00120	Item 608.52 10.5% plus additional duties under items 607.01 and 607.02 on chromium and molybdenum content	Item 609.82 2% + 0.1¢ per lb., plus additional duties, <i>supra</i>	Overton & Co. v. U.S. (C. D. 4875)	Boston Hot rolled, sectional steel shapes, alloyed; not an- nealed, drilled, punched, or otherwise advanced

Decisions of the United States
Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
881/383	Re, C.J. October 16, 1981	Nichimen Co., Inc.	7B-7-01020	Export value	Appraised values shown on entry papers less additions intended to reflect currency valuation	C.B.S. Imports Corp. v. U.S. (C.D. 4780)	San Francisco Miscellaneous articles

R81/364	Re, C.J. October 15, 1981	Nichimen Co., Inc.	70-8-0176;	Export value	C.B.S. Imports Corp. v. U.S. (C.D. 4738)	Appraised values shown on entry papers less additions included to reflect currency re- valuation	Agreed statement of facts	Chicago Miscellaneous articles
R81/365	Rao, J. October 15, 1981	Mitsubishi Interna- tional Corporation	75-1-0006;	American selling price	Appraised values less 25%, per pair	Agreed statement of facts	Boston Footwear	
R81/366	Rao, J. October 15, 1981	Mitsubishi Interna- tional Corporation	75-4-0856;	American selling price	Appraised values less 25%, per pair	Agreed statement of facts	Savannah Footwear	
R81/367	Rao, J. October 15, 1981	Mitsubishi Interna- tional Corporation	75-1-0227;	American selling price	Appraised values less 25%, per pair	Agreed statement of facts	Baltimore Footwear	

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, OCTOBER 29, 1981

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

In The Matter Of
CERTAIN THERMAL CONDUCTIVITY
SENSING GEM TESTERS AND
COMPONENTS THEREOF

} Investigation No. 337-TA-100

Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference will be held in this case at 9:00 a.m. on November 9, 1981, in the Dodge Center, Room 201, 1010 Wisconsin Avenue, N.W., Washington, D.C., and the hearing will commence immediately thereafter.

The purpose of the prehearing conference is to review the trial memoranda submitted by the parties, to stipulate exhibits into the record, and to discuss any questions raised by the parties relating to the hearing.

The Secretary shall publish this notice in the Federal Register.

Issued: October 26, 1981.

JANET D. SAXON,
Administrative Law Judge.

Investigation No. 701-TA-81 (Preliminary)

HARD-SMOKED HERRING FILETS FROM CANADA

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On October 22, 1981, the McCurdy Fish Co., Lubec, Maine, notified the U.S. Department of Commerce and the U.S. International Trade Commission that it was withdrawing its countervailing-duty petition concerning hard-smoked herring filets in accordance with Commerce's recommendation (Commerce found that the data provided by the petitioner in support of the alleged Canadian subsidies was inadequate). Accordingly, the Commission terminates investigation No. 701-TA-81 (Preliminary) pursuant to its authority under section 207.13 of the Commission's Rules of Practice and Procedure.

EFFECTIVE DATE: October 22, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Reavis, Office of Investigations, U.S. International Trade Commission; telephone 202-523-0296.

By order of the Commission.

Issued: October 26, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN VACUUM BOTTLES AND
COMPONENTS THEREOF

Investigation No. 337-TA-108

Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 16, 1981, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Union Manufacturing Co., Inc., 290 Pratt Street, Meriden, Connecticut 06450. The complaint alleges unfair methods of competition and unfair acts in the importation of certain vacuum bottles and components thereof into the United States, or in their sale, by reason of the alleged (1) infringement of complainant's common law trademark, (2) passing off, and (3) false designation of origin. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that, after a full investigation, the Commission issue either an order excluding said articles from entry into

the United States or an order directing respondents to cease and desist from engaging in said unfair acts.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure.

SCOPE OF THE INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on October 15, 1981, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain vacuum bottles and components thereof into the United States, or in their sale, by reason of the alleged (1) infringement of complainant's common law trademark, (2) passing off, or (3) false designation of origin, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Union Manufacturing Co., Inc.
290 Pratt Street
Meriden, Ct. 06450

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hanbaek Trading Co.
C.P.O. Box 7590
Cho Yang Building
50-10 2KA
Chungmu-Ro Chung-ku
Seoul, Korea

Daymu-Hagemeyer (Taiwan) Co. Ltd.
519 Chung Shan N. Road
Section 5 Shih-Lin District
Taipei, Taiwan

Tay Yuan Industrial Co.
Box 282 Tao Yan
No. 4 Lane 56, Pao Lo Street
Tao Yuan, Taiwan, R.O.C.

Western Universal Mercantile Ltd.
15 East 26th Street
New York, N.Y. 10010

Direct Import, Inc.
1420 Landmeier Road
Elk Grove Village, Ill. 60007

Janco Industries, Inc.
190 South King Street
Honolulu, Ha. 96813

Progressive International Corp.
413 Fairview North
Seattle, Wash. 98109

Kenco Incentives, Inc.
7390 Ohms Lane
Edina, Minn. 55435

Wanco International
1485 Bayshore Boulevard
San Francisco, Calif. 94124

T, G & Y Stores Co.
3815 North Santa Fe
Oklahoma City, Ok. 73118

Wholesale Merchandisers
Meijer Division
2901 South Creyts Road
Grand Rapids, Mich. 49501

World Wide, Inc.
4567 West 78th Street
Minneapolis, Minn. 55431

(c) M. Brooke Murdock and John Milo Bryant, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall be the Commission investigative attorneys, a part to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21 (b) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the com-

plaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: M. Brooke Murdock and John Milo Bryant, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-0115 or 202-523-0419, respectively.

By order of the Commission.

Issued: October 23, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN THERMAL CONDUCTIVITY
SENSING GEM TESTERS AND
COMPONENTS THEREOF

} Investigation No. 337-TA-100

*Notice of Addition of Three Respondents and Termination of Investigation
With Respect to Two Respondents*

AGENCY: U.S. International Trade Commission.

ACTION: Addition of three respondents and termination of two respondents.

AUTHORITY: The authority for the Commission action in this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and 19 CFR § 210.22.

SUMMARY: Notice is hereby given that the Commission has granted the joint motion of the parties to amend the notice of investigation to add Brunit Trading AB, of Stockholm, Sweden, Presidium, Inc., of Saugus, Calif., and Presidium Diamond Pte Ltd., of Singapore, as respondents in this investigation, and to terminate the investigation

with respect to respondents Presidium Diamonds Pte Ltd., of South Africa, and Lien International Trading Pte Ltd., of Singapore.

SUPPLEMENTAL INFORMATION: On May 20, 1981, the Commission, upon receipt of a complaint filed by Ceres Electronics Corp., Adams-Smith, and MSB Industries, Inc., published in the Federal Register (46 FR 27586) notice of an investigation to determine whether there is a violation of section 337(a) of the Tariff Act of 1930 in the importation of certain thermal conductivity sensing gem testers and components thereof into the United States, or in their sale, by reason of alleged (1) infringement by said thermal conductivity sensing gem testers of claims 21, 22, or 26 of U.S. Letters Patent 4,255,962; (2) infringement of claims 1, 2, 23, or 24 of U.S. Letters Patent 4,255,962 in the operation of said thermal conductivity sensing gem testers and the inducement of and/or contribution to said infringement; and (3) false advertising concerning such gem testers. The complaint also alleges that the effect or tendency of such unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

On August 25, 1981, the parties filed a joint motion to amend the notice of investigation to add Brunit Trading AB, of Stockholm, Sweden, Presidium, Inc., of Saugus, Calif., and Pesidium Diamond Pte Ltd., of Singapore, as respondents in this investigation, and to terminate the investigation with respect to respondents Presidium Diamonds Pte Ltd., of South Africa, and Lien International Trading Pte Ltd., of Singapore. The administrative law judge certified the motion to the Commission with the recommendation that it be granted. There was no opposition to the proposed amendments.

Any party wishing reconsideration of the Commission's action must do so within fourteen (14) days of service of the Commission order. Any such petition must be in accord with the Commission's Rules of Practice and Procedure (19 CFR § 210.56).

Copies of the Commission's Action and Order and any other public documents in this investigation are available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Notice of the institution of this investigation was published in the Federal Register of May 20, 1981 (46 FR 27586).

FOR FURTHER INFORMATION CONTACT: Scott M. Daniels, Esq., Office of General counsel, telephone 202-523-0480.

By order of the Commission.

Issued: October 23, 1981.

KENNETH R. MASON,
Secretary.

*Investigation No. 731-TA-42 (Final)***MOTORCYCLE BATTERIES FROM TAIWAN****AGENCY:** United States International Trade Commission.**ACTION:** Institution of final antidumping investigation.

SUMMARY: As a result of a preliminary determination by the United States Department of Commerce that there is a reasonable basis to believe or suspect that exports of motorcycle batteries from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. § 1673), the United States International Trade Commission hereby gives notice of the institution of investigation No. 731-TA-42 (Final) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports of such merchandise. For the purposes of this investigation, motorcycle batteries are defined as lead-acid storage batteries principally dedicated for use in motorcycles, having a nominal output of 6 or 12 volts and rated between 2 and 28 ampere-hours (10-hour discharge rate), as provided for in item 683.10 of the Tariff Schedules of the United States. This investigation will be conducted according to the provisions of part 207, subpart C, of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 F.R. 76458).

EFFECTIVE DATE: October 14, 1981.**FOR FURTHER INFORMATION CONTACT:** Mr. David Coombs, Office of Investigations, U.S. International Trade Commission, Room 350, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-1376.

SUPPLEMENTARY INFORMATION: On June 9, 1981, the Commission unanimously determined, on the basis of the information developed during the course of investigation No. 731-TA-42 (Preliminary), that there was a reasonable indication that an industry in the United States was threatened with material injury by reason of imports of motorcycle batteries from Taiwan, which were allegedly being sold in the United States at LTFV. As a result of the Commission's affirmative preliminary determination, the Department of Commerce continued its investigation into the question of LTFV sales. Unless the investigation is extended, the final LTFV determination will be made by the Department of Commerce on or before December 28, 1981.

WRITTEN SUBMISSIONS: Any person may submit to the Commission a written statement of information pertinent to the subject of this investigation. A signed original and nineteen (19) true copies of each submission must be filed at the Office of the Secretary, U.S. Interna-

tional Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, on or before January 8, 1982. All written submissions, except for confidential business data, will be available for public inspection.

Any business information for which confidential business treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6).

A staff report containing preliminary findings of fact will be available to all interested parties on December 23, 1981.

PUBLIC HEARING: The Commission will hold a public hearing in connection with this investigation on January 12, 1982, in the Hearing Room of the U.S. International Trade Commission Building, beginning at 10 a.m., e.s.t. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.s.t.) on December 22, 1981. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend a prehearing conference to be held at 10 a.m., e.s.t., on December 23, 1981, in Room 117 of the U.S. International Trade Commission Building. Prehearing statements must be filed on or before January 8, 1982.

Testimony at the public hearing is governed by section 207.23 of the Commission's Rules of Practice and Procedure (19 CFR § 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing statements and to new information. The Commission will not receive prepared testimony for the public hearing, as would otherwise be provided for by rule 201.12(d). All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing statements in accordance with section 207.22. Posthearing briefs will also be accepted within a time specified at the hearing.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201).

This notice is published pursuant to section 207.20 of the Commission's Rules of Practice and Procedure (19 CFR § 207.20, 44 FR 76472).

By order of the Commission.

Issued: October 22, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN THERMAL CONDUCTIVITY
SENSING GEM TESTERS AND
COMPONENTS THEREOF

} Investigation No. 337-TA-100

Notice of Cancellation of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference scheduled for November 2, 1981 and the hearing scheduled to commence immediately thereafter (46 FR 49679, October 7, 1981) are cancelled.

The Secretary shall publish this notice in the Federal Register.

Issued: October 21, 1981.

JANET D. SAXON,
Administrative Law Judge.

In the Matter of
CERTAIN ULTRAFILTRATION
MEMBRANE SYSTEMS AND
COMPONENTS THEREOF,
INCLUDING ULTRAFILTRATION
MEMBRANES

} Investigation No. 337-TA-107

Notice of Denial of Request for Temporary Relief

AGENCY: U.S. International Trade Commission.

ACTION: Denial of request for temporary relief.

SUMMARY: On October 16, 1981, the Commission denied complainants' request for temporary relief under section 337 of the Tariff Act of 1930 (19 U.S.C. §1337). This action is a sanction taken pursuant to Rule 210.36(b) of the Commission's Rules of Practice and Procedure (19 CFR § 210.36(b)) for complainants' failure to comply with discovery orders.

AUTHORITY: The authority for this action is contained in section 337 of the Tariff Act of 1930 and in section 210.36(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.36(b)).

FOR FURTHER INFORMATION CONTACT: Scott M. Daniels, Esq., Office of the General Counsel, U.S. International Trade Commission, 701E Street NW., Washington, D.C. 20436, telephone 202-523-0480.

By order of the Commission.

Issued: October 19, 1981.

KENNETH R. MASON,
Secretary.

Investigation No. 104-TAA-5**NOTICE OF SUSPENSION OF COUNTERVAILING DUTY INVESTIGATION
CONCERNING SKI LIFTS AND PARTS THEREOF FROM ITALY, CANCELLATION
OF PUBLIC HEARING, AND REQUEST FOR PUBLIC COMMENT
ON TERMINATION OF INVESTIGATION**

AGENCY: United States International Trade Commission.

ACTION: Request for comments on proposed termination of countervailing duty investigation under section 104(b) of the Trade Agreements Act of 1979 and notice of cancellation of public hearing and suspension of investigation pending public comment.

FOR FURTHER INFORMATION CONTACT: Mr. John MacHatton, Office of Investigations, telephone 202-523-0439.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such industry would be materially retarded, if the order were to be revoked. On March 28, 1980, the Commission received a request from the Delegation of the Commission of the European Communities for the review of the countervailing duty order on ski lifts and parts thereof from Italy (T.D. 68-288). The Commission instituted this investigation on August 10, 1981 and published notice of such institution in the Federal Register of August 19, 1981 (46 F.R. 42220). The notice also scheduled a public hearing for this investigation on October 21, 1981, in Washington, D.C.

The Commission received a letter on October 9, 1981 from Hall Ski Lift Company, the original petitioner for the countervailing duty order, withdrawing its petition for a countervailing duty order on ski lifts and parts thereof from Italy.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a section 104(b) investigation, termination of a properly instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. Termination authority is explicit in cases based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders.

Section 704(a) directs the Commission to solicit public comment prior to termination of an investigation and approve the termination only if it is in the public interest. In light of the Commission's duty to

consider the public interest, the Commission requests written comments from persons concerning the proposed termination of the investigation on ski lifts and parts thereof from Italy. These written comments must be filed with the Secretary to the Commission no later than 30 days after publication of this notice in the Federal Register.

This countervailing duty investigation concerning ski lifts and parts thereof from Italy is suspended for the duration of the 30-day public comment period. Further, the public hearing scheduled for 10:00 a.m., October 21, 1981, in the U.S. International Trade Commission Hearing Room is cancelled and will be rescheduled pending review of public comment.

By order of the Commission.

Issued: October 14, 1981.

KENNETH R. MASON,
Secretary.

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